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RECORDS OF THE UNITED STATES

NUERNBERG WAR CRIMES TRIALS

UNITED STATES OF AMERICA v. CARL KRAUCH ET AL. (CASE VI)

AUGUST 14, 1947-JULY 30, 1948

Roll 5

Transcript Volumes (English Version)

Volumes 10-13, p. 3,234-4,710

Nov. 4-Dec. 17, 1947



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INTRODUCTION

On the 113 rolls of this microfilm publication are reproduced the records of Case VI, *United States of America v. Carl Krauch et al.* (I. G. Farben Case), 1 of the 12 trials of war criminals conducted by the U.S. Government from 1946 to 1949 at Nuernberg subsequent to the International Military Tribunal (IMT) held in the same city. These records consist of German- and English-language versions of official transcripts of court proceedings, prosecution and defense briefs and statements, and defendants' final pleas as well as prosecution and defense exhibits and document books in one language or the other. Also included are minute books, the official court file, order and judgment books, clemency petitions, and finding aids to the documents.

The transcripts of this trial, assembled in 2 sets of 43 bound volumes (1 set in German and 1 in English), are the recorded daily trial proceedings. Prosecution statements and briefs are also in both languages but unbound, as are the final pleas of the defendants delivered by counsel or defendants and submitted by the attorneys to the court. Unbound prosecution exhibits, numbered 1-2270 and 2300-2354, are essentially those documents from various Nuernberg record series, particularly the NI (Nuernberg Industrialist) Series, and other sources offered in evidence by the prosecution in this case. Defense exhibits, also unbound, are predominantly affidavits by various persons. They are arranged by name of defendant and thereunder numerically, along with two groups of exhibits submitted in the general interest of all defendants. Both prosecution and defense document books consist of full or partial translations of exhibits into English. Loosely bound in folders, they provide an indication of the order in which the exhibits were presented before the tribunal.

Minute books, in two bound volumes, summarize the transcripts. The official court file, in nine bound volumes, includes the progress docket, the indictment, and amended indictment and the service thereof; applications for and appointments of defense counsel and defense witnesses and prosecution comments thereto; defendants' application for documents; motions and reports; uniform rules of procedures; and appendixes. The order and judgment books, in two bound volumes, represent the signed orders, judgments, and opinions of the tribunal as well as sentences and commitment papers. Defendants' clemency petitions, in three bound volumes, were directed to the military governor, the Judge Advocate General, and the U.S. District Court for the District of Columbia. The finding aids summarize transcripts, exhibits, and the official court file.

Case VI was heard by U.S. Military Tribunal VI from August 14, 1947, to July 30, 1948. Along with records of other Nuernberg

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and Far East war crimes trials, the records of this case are part of the National Archives Collection of World War II War Crimes Records, Record Group 238.

The I. G. Farben Case was 1 of 12 separate proceedings held before several U.S. Military Tribunals at Nuernberg in the U.S. Zone of Occupation in Germany against officials or citizens of the Third Reich, as follows:

<u>Case No.</u>	<u>United States v.</u>	<u>Popular Name</u>	<u>No. of Defendants</u>
1	<i>Karl Brandt et al.</i>	Medical Case	23
2	<i>Erhard Milch</i>	Milch Case (Luftwaffe)	1
3	<i>Josef Altstoetter et al.</i>	Justice Case	16
4	<i>Oswald Pohl et al.</i>	Pohl Case (SS)	18
5	<i>Friedrich Flick et al.</i>	Flick Case (Industrialist)	6
6	<i>Carl Krauch et al.</i>	I. G. Farben Case (Industrialist)	24
7	<i>Wilhelm List et al.</i>	Hostage Case	12
8	<i>Ulrich Greifelt et al.</i>	RuSHA Case (SS)	14
9	<i>Otto Ohlendorf et al.</i>	Einsatzgruppen Case (SS)	24
10	<i>Alfried Krupp et al.</i>	Krupp Case (Industrialist)	12
11	<i>Ernst von Weizsaecker et al.</i>	Ministries Case	21
12	<i>Wilhelm von Leeb et al.</i>	High Command Case	14

Authority for the proceedings of the IMT against the major Nazi war criminals derived from the Declaration on German Atrocities (Moscow Declaration) released November 1, 1943; Executive Order 9547 of May 2, 1945; the London Agreement of August 8, 1945; the Berlin Protocol of October 6, 1945; and the IMT Charter.

Authority for the 12 subsequent cases stemmed mainly from Control Council Law 10 of December 20, 1945, and was reinforced by Executive Order 9679 of January 16, 1946; U.S. Military Government Ordinances 7 and 11 of October 18, 1946, and February 17, 1947, respectively; and U.S. Forces, European Theater General Order 301 of October 24, 1946. Procedures applied by U.S. Military Tribunals in the subsequent proceedings were patterned after those of the IMT and further developed in the 12 cases, which required over 1,200 days of court sessions and generated more than 330,000 transcript pages.

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Formation of the I. G. Farben Combine was a stage in the evolution of the German chemical industry, which for many years led the world in the development, production, and marketing of organic dyestuffs, pharmaceuticals, and synthetic chemicals. To control the excesses of competition, six of the largest chemical firms, including the Badische Anilin & Soda Fabrik, combined to form the Interessengemeinschaft (Combine of Interests, or Trust) of the German Dyestuffs Industry in 1904 and agreed to pool technological and financial resources and markets. The two remaining chemical firms of note entered the combine in 1916. In 1925 the Badische Anilin & Soda Fabrik, largest of the firms and already the majority shareholder in two of the other seven companies, led in reorganizing the industry to meet the changed circumstances of competition in the post-World War markets by changing its name to the I. G. Farbenindustrie Aktiengesellschaft, moving its home office from Ludwigshafen to Frankfurt, and merging with the remaining five firms.

Farben maintained its influence over both the domestic and foreign markets for chemical products. In the first instance the German explosives industry, dependent on Farben for synthetically produced nitrates, soon became subsidiaries of Farben. Of particular interest to the prosecution in this case were the various agreements Farben made with American companies for the exchange of information and patents and the licensing of chemical discoveries for foreign production. Among the trading companies organized to facilitate these agreements was the General Anilin and Film Corp., which specialized in photographic processes. The prosecution charged that Farben used these connections to retard the "Arsenal of Democracy" by passing on information received to the German Government and providing nothing in return, contrary to the spirit and letter of the agreements.

Farben was governed by an Aufsichtsrat (Supervisory Board of Directors) and a Vorstand (Managing Board of Directors). The Aufsichtsrat, responsible for the general direction of the firm, was chaired by defendant Krauch from 1940. The Vorstand actually controlled the day-to-day business and operations of Farben. Defendant Schmitz became chairman of the Vorstand in 1935, and 18 of the other 22 original defendants were members of the Vorstand and its component committees.

Transcripts of the I. G. Farben Case include the indictment of the following 24 persons:

Otto Ambros: Member of the Vorstand of Farben; Chief of Chemical Warfare Committee of the Ministry of Armaments and War Production; production chief for Buna and poison gas; manager of Auschwitz, Schkopau, Ludwigshafen, Oppau, Gendorf, Dyhernfurth, and Falkenhagen plants; and Wehrwirtschaftsfuehrer.

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Max Brueggemann: Member and Secretary of the Vorstand of Farben; member of the legal committee; Deputy Plant Leader of the Leverkusen Plant; Deputy Chief of the Sales Combine for Pharmaceuticals; and director of the legal, patent, and personnel departments of the Works Combine, Lower Rhine.

Ernst Buerger: Member of the Vorstand of Farben; Chief of Works Combine, Central Germany; Plant Leader at the Bitterfeld and Wolfen-Farben plants; and production chief for light metals, dyestuffs, organic intermediates, plastics, and nitrogen at these plants.

Heinrich Buetefisch: Member of the Vorstand of Farben; manager of Leuna plants; production chief for gasoline, methanol, and chlorine electrolysis production at Auschwitz and Moosbierbaum; Wehrwirtschaftsfuehrer; member of the Himmler Freundeskreis (circle of friends of Himmler); and SS Obersturmbannfuehrer (Lieutenant Colonel).

Walter Duerrfeld: Director and construction manager of the Auschwitz plant of Farben, director and construction manager of the Monowitz Concentration Camp, and Chief Engineer at the Leuna plant.

Fritz Gajewski: Member of the Central Committee of the Vorstand of Farben, Chief of Sparte III (Division III) in charge of production of photographic materials and artificial fibers, manager of "Agfa" plants, and Wehrwirtschaftsfuehrer.

Heinrich Gattineau: Chief of the Political-Economic Policy Department, "WIPO," of Farben's Berlin N.W. 7 office; member of Southeast Europe Committee; and director of A.G. Dynamit Nobel, Pressburg, Czechoslovakia.

Paul Haefliger: Member of the Vorstand of Farben; member of the Commercial Committee; and Chief, Metals Departments, Sales Combine for Chemicals.

Erich von der Heyde: Member of the Political-Economic Policy Department of Farben's Berlin N.W. 7 office, Deputy to the Chief of Intelligence Agents, SS Hauptsturmfuehrer, and member of the WI-RUE-AMT (Military Economics and Armaments Office) of the Oberkommando der Wehrmacht (OKW) (High Command of the Armed Forces).

Heinrich Hoerlein: Member of the Central Committee of the Vorstand of Farben; chief of chemical research and development of vaccines, sera, pharmaceuticals, and poison gas; and manager of the Elberfeld Plant.

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Max Ilgner: Member of the Vorstand of Farben; Chief of Farben's Berlin N.W. 7 office directing intelligence, espionage, and propaganda activities; member of the Commercial Committee; and Wehrwirtschaftsfuehrer.

Friedrich Jaehne: Member of the Vorstand of Farben; chief engineer in charge of construction and physical plant development; Chairman of the Engineering Committee; and Deputy Chief, Works Combine, Main Valley.

August von Knieriem: Member of the Central Committee of the Vorstand of Farben; Chief Counsel of Farben; and Chairman, Legal and Patent Committees.

Carl Krauch: Chairman of the Aufsichtsrat of Farben and Generalbevollmaechtigter fuer Sonderfragen der Chemischen Erzeugung (General Plenipotentiary for Special Questions of Chemical Production) on Goering's staff in the Office of the 4-Year Plan.

Hans Kuehne: Member of the Vorstand of Farben; Chief of the Works Combine, Lower Rhine; Plant Leader at Leverkusen, Elberfeld, Uerdingen, and Dormagen plants; production chief for inorganics, organic intermediates, dyestuffs, and pharmaceuticals at these plants; and Chief of the Inorganics Committee.

Hans Kugler: Member of the Commercial Committee of Farben; Chief of the Sales Department Dyestuffs for Hungary, Rumania, Yugoslavia, Greece, Bulgaria, Turkey, Czechoslovakia, and Austria; and Public Commissar for the Falkenau and Aussig plants in Czechoslovakia.

Carl Lautenschlaeger: Member of the Vorstand of Farben; Chief of Works Combine, Main Valley; Plant Leader at the Hoechst, Griesheim, Mainkur, Gersthofen, Offenbach, Eystrup, Marburg, and Neuhausen plants; and production chief for nitrogen, inorganics, organic intermediates, solvents and plastics, dyestuffs, and pharmaceuticals at these plants.

Wilhelm Mann: Member of the Vorstand of Farben, member of the Commercial Committee, Chief of the Sales Combine for Pharmaceuticals, and member of the SA.

Fritz ter Meer: Member of the Central Committee of the Vorstand of Farben; Chief of the Technical Committee of the Vorstand that planned and directed all of Farben's production; Chief of Sparte II in charge of production of Buna, poison gas, dyestuffs, chemicals, metals, and pharmaceuticals; and Wehrwirtschaftsfuehrer.

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Heinrich Oster: Member of the Vorstand of Farben, member of the Commercial Committee, and manager of the Nitrogen Syndicate.

Hermann Schmitz: Chairman of the Vorstand of Farben, member of the Reichstag, and Director of the Bank of International Settlements.

Christian Schneider: Member of the Central Committee of the Vorstand of Farben; Chief of Sparte I in charge of production of nitrogen, gasoline, diesel and lubricating oils, methanol, and organic chemicals; Chief of Central Personnel Department, directing the treatment of labor at Farben plants; Wehrwirtschaftsfuehrer; Hauptabwehrbeauftragter (Chief of Intelligence Agents); Hauptbetriebsfuehrer (Chief of Plant Leaders); and supporting member of the Schutzstaffeln (SS) of the NSDAP.

Georg von Schnitzler: Member of the Central Committee of the Vorstand of Farben, Chief of the Commercial Committee of the Vorstand that planned and directed Farben's domestic and foreign sales and commercial activities, Wehrwirtschaftsfuehrer (Military Economy Leader), and Hauptsturmfuehrer (Captain) in the Sturmabteilungen (SA) of the Nazi Party (NSDAP).

Carl Wurster: Member of the Vorstand of Farben; Chief of the Works Combine, Upper Rhine; Plant Leader at Ludwigshafen and Oppau plants; production chief for inorganic chemicals; and Wehrwirtschaftsfuehrer.

The prosecution charged these 24 individual staff members of the firm with various crimes, including the planning of aggressive war through an alliance with the Nazi Party and synchronization of Farben's activities with the military planning of the German High Command by participation in the preparation of the 4-Year Plan, directing German economic mobilization for war, and aiding in equipping the Nazi military machines.¹ The defendants also were charged with carrying out espionage and intelligence activities in foreign countries and profiting from these activities. They participated in plunder and spoliation of Austria, Czechoslovakia, Poland, Norway, France, and the Soviet Union as part of a systematic economic exploitation of these countries. The prosecution also charged mass murder and the enslavement of many thousands of persons particularly in Farben plants at the Auschwitz and Monowitz concentration camps and the use of poison gas manufactured by the firm in the extermination

¹The trial of defendant Brueggemann was discontinued early during the proceedings because he was unable to stand trial on account of ill health.

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of millions of men, women, and children. Medical experiments were conducted by Farben on enslaved persons without their consent to test the effects of deadly gases, vaccines, and related products. The defendants were charged, furthermore, with a common plan and conspiracy to commit crimes against the peace, war crimes, and crimes against humanity. Three defendants were accused of membership in a criminal organization, the SS. All of these charges were set forth in an indictment consisting of five counts.

The defense objected to the charges by claiming that regulations were so stringent and far reaching in Nazi Germany that private individuals had to cooperate or face punishment, including death. The defense claimed further that many of the individual documents produced by the prosecution were originally intended as "window dressing" or "howling with the wolves" in order to avoid such punishment.

The tribunal agreed with the defense in its judgment that none of the defendants were guilty of Count I, planning, preparation, initiation, and waging wars of aggression; or Count V, common plans and conspiracy to commit crimes against the peace and humanity and war crimes.

The tribunal also dismissed particulars of Count II concerning plunder and exploitation against Austria and Czechoslovakia. Eight defendants (Schmitz, von Schnitzler, ter Meer, Buergin, Haeffliger, Ilgner, Oster, and Kugler) were found guilty on the remainder of Count II, while 15 were acquitted. On Count III (slavery and mass murder), Ambros, Bueteffisch, Duerrfeld, Krauch, and ter Meer were judged guilty. Schneider, Bueteffisch, and von der Heyde also were charged with Count IV, membership in a criminal organization, but were acquitted.

The tribunal acquitted Gajewski, Gattineau, von der Heyde, Hoerlein, von Knieriem, Kuehne, Lautenschlaeger, Mann, Schneider, and Wurster. The remaining 13 defendants were given prison terms as follows:

<u>Name</u>	<u>Length of Prison Term (years)</u>
Ambros	8
Buergin	2
Bueteffisch	6
Duerrfeld	8
Haeffliger	2
Ilgner	3
Jaehne	1 1/2
Krauch	6
Kugler	1 1/2
Oster	2
Schmitz	4
von Schnitzler	5
ter Meer	7

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All defendants were credited with time already spent in custody.

In addition to the indictments, judgments, and sentences, the transcripts also contain the arraignment and plea of each defendant (all pleaded not guilty) and opening statements of both defense and prosecution.

The English-language transcript volumes are arranged numerically, 1-43, and the pagination is continuous, 1-15834 (page 4710 is followed by pages 4710(1)-4710(285)). The German-language transcript volumes are numbered 1a-43a and paginated 1-16224 (14a and 15a are in one volume). The letters at the top of each page indicate morning, afternoon, or evening sessions. The letter "C" designates commission hearings (to save court time and to avoid assembling hundreds of witnesses at Nuernberg, in most of the cases one or more commissions took testimony and received documentary evidence for consideration by the tribunals). Two commission hearings are included in the transcripts: that for February 7, 1948, is on pages 6957-6979 of volume 20 in the English-language transcript, while that for May 7, 1948, is on pages 14775a-14776 of volume 40a in the German-language transcript. In addition, the prosecution made one motion of its own and, with the defense, six joint motions to correct the English-language transcripts. Lists of the types of errors, their location, and the prescribed corrections are in several volumes of the transcripts as follows:

- First Motion of the Prosecution, volume 1
- First Joint Motion, volume 3
- Second Joint Motion, volume 14
- Third Joint Motion, volume 24
- Fourth Joint Motion, volume 29
- Fifth Joint Motion, volume 34
- Sixth Joint Motion, volume 40

The prosecution offered 2,325 prosecution exhibits numbered 1-2270 and 2300-2354. Missing numbers were not assigned due to the difficulties of introducing exhibits before the commission and the tribunal simultaneously. Exhibits 1835-1838 were loaned to an agency of the Department of Justice for use in a separate matter, and apparently No. 1835 was never returned. Exhibits drew on a variety of sources, such as reports and directives as well as affidavits and interrogations of various individuals. Maps and photographs depicting events and places mentioned in the exhibits are among the prosecution resources, as are publications, correspondence, and many other types of records.

The first item in the arrangement of prosecution exhibits is usually a certificate giving the document number, a short description of the exhibits, and a statement on the location of the original document or copy of the exhibit. The certificate is followed by the actual prosecution exhibit (most are photostats,

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but a few are mimeographed articles with an occasional carbon of the original). The few original documents are often affidavits of witnesses or defendants, but also ledgers and correspondence, such as:

<u>Exhibit No.</u>	<u>Doc. No.</u>	<u>Exhibit No.</u>	<u>Doc. No.</u>
322	NI 5140	1558	NI 11411
918	NI 6647	1691	NI 12511
1294	NI 14434	1833	NI 12789
1422	NI 11086	1886	NI 14228
1480	NI 11092	2313	NI 13566
1811	NI 11144		

In rare cases an exhibit is followed by a translation; in others there is no certificate. Several of the exhibits are of poor legibility and a few pages are illegible.

Other than affidavits, the defense exhibits consist of newspaper clippings, reports, personnel records, Reichsgesetzblatt excerpts, photographs, and other items. The 4,257 exhibits for the 23 defendants are arranged by name of defendant and thereunder by exhibit number. Individual exhibits are preceded by a certificate wherever available. Two sets of exhibits for all the defendants are included.

Translations in each of the prosecution document books are preceded by an index listing document numbers, biased descriptions, and page numbers of each translation. These indexes often indicate the order in which the prosecution exhibits were presented in court. Defense document books are similarly arranged. Each book is preceded by an index giving document number, description, and page number for every exhibit. Corresponding exhibit numbers generally are not provided. There are several unindexed supplements to numbered document books. Defense statements, briefs, pleas, and prosecution briefs are arranged alphabetically by defendant's surname. Pagination is consecutive, yet there are many pages where an "a" or "b" is added to the numeral.

At the beginning of roll 1 key documents are filmed from which Tribunal VI derived its jurisdiction: the Moscow Declaration, U.S. Executive Orders 9547 and 9679, the London Agreement, the Berlin Protocol, the IMT Charter, Control Council Law 10, U.S. Military Government Ordinances 7 and 11, and U.S. Forces, European Theater General Order 301. Following these documents of authorization is a list of the names and functions of members of the tribunal and counsels. These are followed by the transcript covers giving such information as name and number of case, volume numbers, language, page numbers, and inclusive dates. They are followed by the minute book, consisting of summaries of the daily proceedings, thus providing an additional finding aid for the transcripts. Exhibits are listed in an index that notes the

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type, number, and name of exhibit; corresponding document book, number, and page; a short description of the exhibit; and the date when it was offered in court. The official court file is summarized by the progress docket, which is preceded by a list of witnesses.

Not filmed were records duplicated elsewhere in this microfilm publication, such as prosecution and defense document books in the German language that are largely duplications of the English-language document books.

The records of the I. G. Farben Case are closely related to other microfilmed records in Record Group 238, specifically prosecution exhibits submitted to the IMT, T988; NI (Nuernberg Industrialist) Series, T301; NM (Nuernberg Miscellaneous) Series, M-936; NOKW (Nuernberg Armed Forces High Command) Series, T1119; NG (Nuernberg Government) Series, T1139; NP (Nuernberg Propaganda) Series, M942; WA (undetermined) Series, M946; and records of the Brandt case, M887; the Milch Case, M888; the Altstoetter case, M889; the Pohl Case, M890; the Flick Case, M891; the List case, M893; the Greifelt case, M894; and the Ohlendorf case, M895. In addition, the record of the IMT at Nuernberg has been published in the 42-volume *Trial of the Major War Criminals Before the International Military Tribunal* (Nuernberg, 1947). Excerpts from the subsequent proceedings have been published in 15 volumes as *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10* (Washington). The Audiovisual Archives Division of the National Archives and Records Service has custody of motion pictures and photographs of all 13 trials and sound recordings of the IMT proceedings.

Martin K. Williams arranged the records and, in collaboration with John Mendelsohn, wrote this introduction.

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Roll 5

Target 1

Volume 10, p. 3,234-3,563

Nov. 4-7, 1947

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

OFFICIAL RECORD

UNITED STATES MILITARY TRIBUNALS NÜRNBERG

**CASE No. 6 TRIBUNAL VI
U.S. vs CARL KRAUCH et al
VOLUME 10**

**TRANSCRIPTS
(English)**

4-7 November 1947 pp. 3234-3563

Official Transcript of the American Military
Tribunal VI in the Matter of the United States
of America against K/RL KRAUCH et al, defendants,
sitting at Nurnberg, Germany, on 4 November 1947,
0930, Justice Shaks, Presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United States
of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Are the defendants present, Mr. Marshal:

THE MARSHAL: May it please your Honors, all defendants are present
in the Courtroom.

THE PRESIDENT: The Tribunal would like to present a matter for the
information of counsel and the defendants. The Tribunal has been
conscious for some time of the fact that is confronted with two very
troublesome problems. One is the definite obligation resting on the
Tribunal to see that the trial of this case is conducted without
unnecessary delay and the other is the problem of guaranteeing to the
defendants a fair and reasonable opportunity to cross examine a large
number of witnesses whose affidavits were offered by the prosecution.
The Tribunal is much concerned that no unreasonable limitations be imposed
upon counsel for the defendants with respect to such matters as these
cross examinations. This has led us to the conclusion that we would be
justified in taking some constructive step calculated to solve, in a
measure at least, both of these problems. This morning the Tribunal has
filed in the Office of the Secretary General an order which, omitting
the title and the signatures I would like at this time to read into the
record so that counsel may be advised with respect to it promptly. The
order is as follows:

"In order to discharge the obligation resting upon it to achieve an
expeditious hearing of the issues and to avoid unreasonable delay,
(Military Government Ordinance Number 7, Article VI), the Tribunal finds
it necessary to issue the following:

ORDER:

1. Dr. John H.E. Fried is hereby appointed a Commissioner of this Tribunal to preside at and supervise the taking of the testimony of such witnesses as may hereafter, from time to time, be designated by the Tribunal on the official record of its proceedings.

2. Before assuming his official duties hereunder the said Dr. John H.E. Fried shall take, subscribe to and file with the Secretary General an oath or affirmation to the effect that he will honestly, faithfully and impartially perform and discharge his duties as such Commissioner.

3. Said Commissioner shall have power to administer oaths; take evidence; enforce the attendance of witnesses, parties and counsel; preserve good order; fix and determine the time of his hearings; and do all other things reasonably necessary to the proper administration of his office; all subject to the directions of the Tribunal and review by the Tribunal for good cause shown.

4. The said Commissioner shall cause a verbatim report of his proceedings, including the testimony and evidence taken before him, to be properly recorded, reported, certified to, and filed in the office of the Secretary General. All evidence so reported by the Commissioner shall be considered by the Tribunal as of the same force and effect as evidence heard by the Tribunal in open court. The Commissioner shall also cause an appropriate number of copies of all such testimony and evidence, in the German and English languages, to be made available for the use of the Tribunal and counsel in this cause.

5. It shall be the duty of the Secretary General and the Marshal of the Tribunals to make available to said Commissioner such facilities, services and accommodations as may be reasonably necessary for the proper discharge of his official duties.

6. This Order is without prejudice to the power and authority of the Tribunal to modify or rescind the same at its pleasure."

The order is dated today and signed by all members of the Tribunal. I believe, counsel, that this is a time when the Tribunal said they would

hear brief statements from you with reference to the admissibility of some three affidavits. Is that correct? Did you so understand?

MR. SPRECHER: Yes, Mr. President.

THE PRESIDENT: Did the defense so understand that we would hear your statements with reference to the admissibility of the exhibits marked for identification 1291, 1293 and 1294? We understand from the observations that were made at the time these exhibits were offered by the prosecution that the basis of the question now before the Tribunal is the admissibility of these affidavits in as much as the affiants are now deceased. Is that correct, counsel? We shall hear the objections -- hear counsel for the defense.

DR. SEIDL: Dr. Seidle for the defendant Dr. Duerrfeld. Mr. President, Your Honors, last Friday the prosecution offered an affidavit of the former Plenipotentiary General for Labor Fritz Sauckel, dated 3 September 1946. This affidavit bears the number NI-1098 and is in Document Book 67 of the prosecution and page 29 of the English text and page 23 of the German text. I make the motion that this affidavit that Fritz Sauckel signed and the period between the presentation of evidence and the judgment of the IMT not be admitted in evidence. Fritz Sauckel was condemned to death by the IMT. The judgment was executed on 16 October 1946. The prosecution is therefore unable to produce the affiant for cross examination. A modern criminal trial should be guided by the principle that the proceedings should be direct and oral. This means that on principle witnesses should appear directly before the Court for examination. This principle is valid in German Criminal Procedure, but American Criminal Procedure also is obviously directed by this principle. According to this principle the submission of an affidavit in evidence is not admissible if the witness cannot be made available for cross examination. I refer in this connection to the work of Wharton on Evidence in Criminal Cases, Vol 3, the Edition of 1935, on page 2162 and I quote: "To a defendant charged with a grave crime the right of cross examination should be extended liberally."

There then follows a reference to a decision. Then Wharten continues and I quote:

"The constitutional right of the accused to meet the witnesses against him face to face includes the right to cross examine every witness not called by himself and requires their personal presence so that they may be cross examined by him. If, therefore, a witness dies after giving damaging testimony and before opportunity for cross examination is had, his testimony in chief becomes incompetent and a mistrial should be ordered."

In the case of the witness Sauckel there is a further consideration that he was examined on several questions on the witness stand before the IMT; questions on the subject of this affidavit. Both defendants and prosecution had the opportunity at the time to cross examine the witness. If the prosecution attaches significance to the testimony of this witness, they need only present excerpts from the transcript of the IMT. As to the admissibility of such excerpts the defense will raise no objections.

The same objection must be made to this statement of Rudolf Heess, made on 12 March 1947 -- this statement is also in Vol. 67 of the Prosecution. This is Document NI-4434, page 37 in the English Document Book. Heess was condemned to death by a Polish Court and the sentence has already been executed. Therefore, he cannot be called for cross examination. In this case, however, there is also the following consideration: the prosecution has already pointed out that this document NI-4434 is not, -- as the index of Document Book 67 maintains, an affidavit. The document is only a statement which has not been sworn to. The assertion of the prosecution that according to the Continental European Criminal Procedure the swearing of the witness was not possible because he, himself, was a defendant, does not apply here. It is true that according to the European criminal system swearing in is not admissible in cases in which the person concerned is a defendant. This does not, however, make it impossible for him to be sworn in other trials and in which he is not a defendant himself; not even when a criminal proceedings is in process against him at

the time. In Germany and in other countries of Europe many persons are examined and sworn in as witnesses today although criminal proceedings have already begun against them. The swearing in of Rudolf Hoess could, therefore, have taken place. Without, of course, anticipating the decision of the Court I should like to add that in these previous trials the Military Tribunals in Nurnberg have refused to admit unsworn statements.

Now, the prosecution, in connection with the statement of Rudolf Hoess of 12 March 1947, has submitted an affidavit of the interrogator and the stenographer who were present when the statement of Rudolf Hoess was taken down and who testified that Rudolf Hoess stated that the statements which he signed contained the full truth. It need not be especially emphasized that the submission of such an affidavit cannot by any means replace the oath which is missing. If such procedures were to be considered admissible then the value of the oath would be completely destroyed. The oath must not be made by someone else but by the witness himself.

THE PRESIDENT: Counsel, in your statement you refer to the fact that other Tribunals of this agency have passed upon this matter. I may say to you that under the procedure that we follow here, this being your objection, you have the opening and the close of the argument. We shall now hear what the prosecution has to say but I wish to advise you that there is no impropriety whatsoever when you call to our attention specifically the precedents of the other Tribunals. On the contrary, this Tribunal would be inclined and disposed to give weight to well-considered rulings of other Tribunals that stand on the same plane as this. If, therefore, in your concluding argument you are in position to give us a reference to the rulings of other Tribunals of like character in dealing with this same matter you may not only do so but we would be very happy to have you do so. We will now hear the prosecution.

MR. SPEECHER: May it please the Tribunal, the objection to the Hoess affirmations particularly indicates the importance of your ruling in this case, since Hoess was the Commander of the Auschwitz murder factory in connection with which we allege the defendants to have been criminally involved. Hoess has given a number of highly relevant affidavits which we propose to offer. Some of them are in the form of affidavits since they were taken before the time he was under actual trial before the Polish Court and we submit that these affidavits and affirmations which we propose to offer, will assist the Tribunal in sizing up the full truth concerning the Auschwitz complex in this case. Of course, it should be pointed out, that the defendants in these War Crime Trials have also offered such affidavits as, for example, an affidavit by Hermann Goering in the Flick case, now being heard.

Your Honors will recall that Dr. Nelte on 21 October at pages 2405-6 of the Transcript pointed out that at that time: "the defense with respect to the basic settlement of this question has made no decision as yet whatsoever."

At that time you recall the question before your Honors was where the affiant could not be produced for cross examination but there was some possibility that cross-interrogatories might be submitted. Now, from discussions with some of the defense counsel I knew they have at least planned to use some of these statements and I only place that before the Tribunal to indicate that this is a ruling which may go both ways.

Now, even though we discussed before you the general problems confronted before and even though Judge Hebert, I believe, summarized the position of the prosecution before-hand, with your permission I would like to cite some of the precedents that have developed here and give you the page numbers since I think it's a rather grave and weighty problem. Is that satisfactory, Mr. President?

MR. PRESIDENT: Yes, we would like to have it.

MR. SPEECHER: So far as we have been able to ascertain, the exact question did not come up before the DMT but we submit that the ruling and observations of the President of the DMT on the Messerschmidt affidavit are actually in point. Your Honors may want to refer to page 352, Vol. II of the Official American Printed Version of the "Trial of the Major War Criminals." The basic rule stated by President Lawrence there has ever since been followed by the American Military Tribunals so far as we can ascertain. I won't quote the entire extract of his statements in that ruling but only one question -- only one point. After ruling that it was admissible he said:

"The question of the probative value of an affidavit as compared with a witness who has been cross examined would, of course, be considered by the Tribunal."

THE PRESIDENT: Pardon me, counsel. As I understand, you are not asserting that that was a case where the affidavit of a deceased was involved.

MR. SPEECHER: No, your Honor, it was where the witness was beyond the jurisdiction of the Court and could not be called.

THE PRESIDENT: Were there any steps taken there to provide the defense with an opportunity to get counter-affidavits or submit affidavits or do you know?

MR. SPEECHER: As I understand it, they were offered the opportunity but did not exercise the privilege.

THE PRESIDENT: Very well. I hope you will pardon the interruption. I want to get the facts.

MR. SPEECHER: It seems to me, as I pointed out, it isn't exactly in point but I thought the observation would be helpful because it's at least a parallel case. Now, the provisions of Art. 16-E of the Charter of the IMT and ART. 4-E of Ordinance 7 both give the defense "the right to cross examine any witness called by the prosecution." Words of art are used in the concluding phrase, "any witness called by the prosecution." We submit that the right as such applies only where a person is called as a witness. Of course, where an affiant is available and if the prosecution should refuse to produce him, the Tribunal could certainly order the affiant produced under other provisions of ART. 4 of Ordinance 7 and I think that's been rather clear from your passage so far. The provisions of the IMT Charter and Ordinance 7 are likewise very similar in that the Tribunals are not bound by the technical rules of evidence, many of which grew up around the jury system of trials.

Art. 19 of the Charter and Art. 7 of Ordinance 7 are the provisions in point. Art. 7, however, contains the explicit provision that affidavits "shall be deemed admissible if they appear to the Tribunal to contain information of probative value relating to the charges." Although we submit that the plain language of the ordinance allows no other construction than that these affidavits are admissible if they contain relevant declarations, some further review of the actual precedents before the American Military Tribunals acting pursuant to Art. 7 seems in order. The first ruling on the exact point, so far as we know, came up before American Military Tribunal I in Case No. I,

the so-called "medical case", on 6 January 1947. It may be found at the official transcript of that case at page 1093. The affidavit was by Dr. Erwin Ding, alias Dr. Erwin Schuler. The affidavit in the record appears to have been signed by Schuler before he went back to his original identity. It bears Document Number NO-257 and was admitted as Prosecution Exhibit 283. Dr. Ding gave an affidavit concerning medical experiments in July 1945 to an American Officer, and thereafter in the same year Dr. Ding committed suicide. When the affidavit was offered in the medical trial in January 1947 defense counsel objected on the ground that the affiant could not be called as a witness but the affidavit was admitted over this objection: Transcript 1091-93. The Ding precedent has been followed ever since at Nurnberg so far as we can ascertain. In the so-called "Pohl case", Case No. IV, before Tribunal II, the Tribunal admitted two affidavits by Rudolf Hoess, the same affiant who comes into question in one or two of these here, after it had been determined that Hoess could not be produced as a witness.

At that time Hoess was under trial in Poland and Judge Toms remarked that he could not be brought here so, for that particular time, the case is not 100% in point but still the same principle applies.

The first affidavit by Hoess was Exhibit 51, Document No. 3868-PS. The objections to the offer and the ruling can be found at pages 129-131 of the official mimeographed transcript in that case. Later another affidavit by Hoess was also admitted, namely, Exhibit 297, Document No. NI-034, at the transcript pages 571-575. If I am not mistaken, Dr. Seidl participated in that trial and also entered an objection at that time.

Now in the Justice Case an affidavit of Carl Falk, Exhibit 147, Document No. NG-401, was admitted even though Falk was dead. That affidavit was offered at page 970 and admitted at pages 976-977. Now thereafter in the only other War Crimes Case in Nurnberg so far involving industrialists, the Flick Case, Case No. V before Tribunal No. IV, both the Prosecution and the Defense offered without objection affidavits by affiants previously executed as war criminals. The Prosecution introduced the Sauckel affidavit, the very same affidavit as is now before us, as Exhibit 71, and that is at page 323 of the transcript. The Defense offered an affidavit by Hermann Goering.

THE PRESIDENT: Mr. Prosecutor, in that connection am I right in assuming that in American jurisdictions where the rule that a defendant is entitled to be confronted with the witnesses obtains, and which as Counsel for the Defense pointed out might have some application under those circumstances, isn't it generally recognized that that is a right that can be waived by a defendant? In other words, it doesn't go so far as to invalidate the proceedings if a defendant is not confronted by a witness providing he has expressly waived the privilege. Is that correct in your view? Why, I can illustrate it in this way. In the jurisdiction in which I have lived we have this rule, and yet a defendant may go out and take a deposition. The prosecution

cannot, because the prosecution is required to produce the witness; but it has been held in our jurisdiction -- and I use that only for purposes of illustration -- that that is a Constitutional guarantee that can be waived by defendant, and that he may if he wishes give notice and go out and take a deposition to be used in his defense. Is that a correct general rule as you understand it under American-English jurisprudence?

MR. SPRECHER: Mr. President, may I have just a moment to consult with my colleagues?

THE PRESIDENT: Certainly.

MR. SPRECHER: We are, indeed, of the general opinion that Your Honor has stated the rule properly as it applies generally.

THE PRESIDENT: Very well. Thank you.

MR. SPRECHER: Now the Prosecution here underneath Ordinance 7 in connection with the Sauckel affidavit could ask Your Honors to take judicial notice of it because it is a part of another matter, but we think that the issue really runs much deeper than that and that this is not only a question of in one way or another getting the affidavit before you, and, indeed, it wouldn't answer some of the other questions we have here including the Hoess matter now before us. The Hoess affidavits which have so far been introduced are different affidavits than the one in question, but it should be pointed out, Mr. President and Honorable Members of the Tribunal, that so far as the record shows in each of the cases I have mentioned this morning, which we think are precedents, there was no such question of judicial notice that was raised, and hence the ruling was squarely upon the issue. Now the adjective law on the point seems to us clear and to have been codified in both the IMT charter and in Ordinance No. 7. Of course, it just is not so that Constitutional

rights per se and as such run in favor of these defendants, and that is another law in point which we don't propose to go into here, and which has been answered satisfactorily even in proceedings going to the United States Supreme Court. But we think that this codification in the IMT charter and Ordinance No. 7 which sets the matter down for such cases as these in international law is in line with the modern trend, at least where the triers of fact are jurists and not lawmen; and we submit that the provisions are necessary for a full and complete inquiry after the truth, and that the opposing party, whoever it may be, can in many ways contest concerning the weight to be given to the affidavit.

THE PRESIDENT: The Prosecution will hear Counsel for the Defense, concluding the argument.

DR. SEIDL: Dr. Seidl for the defendant Dr. Duerrfeld.

Mr. President, Your Honors, I have very little to answer to the statements of the Prosecutor. In general I can merely refer to what I have already said. First of all, Mr. Sprecher referred to Ordinance No. 7 of the Military Government for Germany which, in addition to Control Council Law No. 10, is the legal basis for the present trials. Military Government Ordinance No. 7 does not answer the question which is to be answered here and now. Ordinance No. 7 merely gives very general directives for a fair proceedings, and on this question as well as a number of other important questions it does not comment at all.

Secondly, Mr. Sprecher referred to the case of Ambassador Messerschmidt. I should like to say that this case cannot be used for comparison here. Ambassador Messerschmidt was still alive during the trial of the IMT. At that time he was Ambassador in Mexico. The Court accepted his affidavit at that time because he was still alive, and all the defense counsel were given the opportunity to send

questionnaires to the witness which were then answered by a commission. It is not true that the defense took no advantage of this opportunity. I myself sent a questionnaire to Ambassador Messerschmith, and I know that a number of the other Defense Counsel took advantage of this right. If the International Military Tribunal had recourse to questionnaires, this was done for the explicit reason that Ambassador Messerschmith was in Mexico and because of sickness could not appear before the Court.

Thirdly, the Prosecutor said that before Military Tribunal No. II in Case No. IV the affidavit of Rudolf Hoess was accepted in evidence. This was not the same affidavit which is the subject of this discussion. Moreover, at the time when this other affidavit was offered in evidence, Hoess was still alive. The Court accepted the affidavit with the provision that the Prosecution would produce the affiant Hoess for cross examination if the Defense requested this. But for various reasons the Defense did not take any advantage of this right. Consequently, the question did not come up at the time that this affidavit which had been admitted should be stricken from the record later.

Fourth, the Prosecutor referred to a case in Case No. V, the so-called Flick trial. As far as I am informed, the Defense did not object to the admission of the Sauckel affidavit. I do not know why no objection was raised, but I can imagine that the Defense made no objection because they intended to offer an affidavit of Hermann Goering, who is also dead. In any case, this case cannot be considered a parallel.

On the other hand, I can remember that in Case No. IV in another case the affidavit of a witness was not admitted, a witness who had died in the meantime, and I can remember very definitely that statements were rejected

which were not sworn to. This occurred before the IMT as well as before Tribunal No. I in Case No. I, Tribunal No. II, Case No. IV, and as far as I know, before other Tribunals as well.

THE PRESIDENT: Before we close this argument, the President would like to ascertain if any of the members of the Tribunal have any questions to ask either the Prosecution or the Defense.

Very well, we will declare this argument concluded, and I am sure that Counsel will appreciate the fact that the Tribunal will wish to confer before making a ruling on the admissibility of the exhibits now under consideration.

Are there any other preliminary matters to be presented before we resume the trial proper? Have you anything, Mr. Prosecutor?

MR. SPRECHER: No, Mr. President.

THE PRESIDENT: Has the Defense? Very well, the Prosecution may proceed with the introduction of its evidence. Just a moment, please.

DR. GATHER: Dr. Gather for Dr. Amoros.

Your Honors, at the beginning of the session the Tribunal mentioned that a commissioner was to be appointed. I should like to discuss that question. I should like to object formally on behalf of my client. If I understood the Tribunal correctly, the testimony of witnesses is to be given before the Commissioner through the Defense Counsel and the representative of the Prosecution. I make application that the defendant also be present. I should like to explain my request as follows.

THE PRESIDENT: Counsel, if you will pardon the interruption, there is nothing in the Order that the Tribunal entered that forbids a Defense Counsel and his client from being present. We do expect that Defense Counsel shall be

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present, and if any occasion arises where he desires that
his client be present for the inquiry before the Commissioner,
certainly that will be provided.

It occurred to the President that perhaps since you haven't seen the text of the Order that you might have been misinformed or misunderstood it. If that is what is concerning you, the right of representation by Counsel before the Prosecution, I can put your mind at rest on that. Certainly we would not authorize or permit an examination before a Commissioner of this Tribunal without a party being represented by Counsel, and if Counsel feels that his client ought also to be present, we will see that that right is preserved. Now if you have anything further to say, we will hear you, but I interrupted you to correct what I thought might be a misapprehension on your part.

DR. GATHER: Thank you, Mr. President. That was only the first question. After hearing your explanation, I have nothing to say for the moment, but since the problem of the appointment of a commissioner to hear testimony is a question of fundamental importance, I should like to reserve the right to bring the question up again.

THE PRESIDENT: Counsel for the Prosecution may proceed.

MR. VAN STREET: May it please Your Honors, I should like to point out at this time to the Tribunal that the documents remaining in the books to be presented actually number considerably over one hundred. However, we have reduced the number of documents including affidavits which will be presented in this phase of the case to approximately ninety. This deletion includes eleven affidavits which in turn involves nine affiants, and I wish to assure the Tribunal that if in the course of the presentation any further reduction seems compatible with a fair and complete presentation of this phase of the case, why such reduction will be made.

THE PRESIDENT: Thank you, Counsel.

MR. VAN STREET: I am now referring to Document No. NI-6850 in Book No. 68 which the Prosecution will omit.

The next document is NI-6848 which may be marked as Exhibit 1328. This, Your Honors, is an affidavit of Christian Schneider dated 22 April 1947. This is found on page 80 of the English and 98 of the German. I

should like to point out to the Tribunal an error in translation. The German word "Hauptbetriebsfuehrer" which should be translated "chief plant leader" has been translated "head workshop leader", and I respectfully ask the Tribunal when it notes this affidavit to make that correction all through the pages.

The Tribunal's attention is called to paragraph 5 of this affidavit, on page 81 of the English and 100 of the German wherein the affiant states:

"As chief plant leader of the I.G. Farbenindustrie, the whole of the Vorstand was according to the National Labor Law responsible for the care of all social matters. This function in 1937 was transferred to me. Therefore, I had to report regularly to the Vorstand and each time after important questions of principle regarding social matters had been decided, I cannot remember a single instance in which the Vorstand did not agree with me in my decision."

On page 82 of the English and beginning 100 of the German, paragraph 7, the affiant states:

"I was informed of the fact that the work done by Eastern and to some extent also by Western workers had to be looked upon as forced labor." And in the same paragraph: "I was told that in the occupied Eastern territories (Russia and Poland) people were collected in the streets and deported to Germany in bands. I also knew that Eastern workers had no working contracts of any kind. In the case of the Western workers, that is, Frenchmen, Dutchmen, Belgians, Czechs, etc., I knew that when a Western worker wanted to take the leave promised to him in his contract, he had to produce" — I would like to make a correction here. It should be "guarantor" instead of "hostage" — "of the same nationality who in the event of the former not returning had to forego his own leave; that finally all leave for Western workers was discontinued; that a Western worker after expiration of his contract regardless of his own wishes, had to remain in Germany for more work; that a Western worker who went home inspite of that was brought back to Germany by force."

Coming down to the first sentence in paragraph 8:

"I suppose that all the gentlemen of the I.G. knew about the facts mentioned under Par. 7 as much as I did, because these things were common knowledge."

I refer you respectfully to page 83 of the English and 101 of the German, paragraph 9. I quote:

"Part of my personal duties was the preliminary authorization of all larger investments in the social field, such as the erection of camps for billeting foreigners, prisoners of war and concentration camp inmates, who were employed in the various works of the I.G., the installation, fencing round, etc., of such camps. All requests for loans for such programs were sent to me by the Technical Committee of the requesting plant for preliminary examination, and they contained in every case an exact list and description of the various items. However, the complete programs were not presented in every case. Final authorization was given by the Vorstand after preliminary authorization by myself and discussion and authorization by the Technical Committees."

In paragraph 10 the affiant talks about the duties of the social office of I.G. which came under him and which was specifically called "Buero Bertrams".

Referring now to paragraph 11, a correction in translation, "The plant leaders", not the "workshop leaders" — "of the various plants of the I.G. had to send monthly lists about the number of employees to Bertrams office. Among these lists there was one in which the figure for employees was subdivided as follows: German workers and employees, foreign workers (these were further subdivided according to nationalities), prisoners of war, and, combined in one category, German and foreign workers on loan, criminal prisoners of the Armed Forces and concentration camp inmates, whereby the greater part of this category consisted of concentration camp inmates." That is emphasized, may it please Your Honors, because it ties in with the disputed matters in the Struss charts. "With the exception of the prisoners of war these categories were again subdivided according to

male and female. These and other lists originating from the various plants were combined and used in the "Office of Bertrams" for the whole of the I.G. and they formed the basis for statistics and diagrams which were brought to the attention of the Technical Committee. The purpose was to show to the members of the Technical Committee the state and development of the employee situation in the whole of the I.G."

And then on page 85, Your Honors, at the top of the paragraph which is 105 of the German:

"At the meetings of the Technical Committee" — that is the TEA — "Dr. Ernst August Struss gave lectures with the help of these tables and diagrams."

Now coming down to paragraph 12 the recruiting activities in foreign countries of Farben are mentioned, and the affiant goes on to say that Farben employees served as advisors on the staff of the Plenipotentiary General for Special Questions of the Chemical Production. That is Krauch's office. "However, they still continued to receive their salaries from I.G., and in this way, for instance, a considerable number of gentlemen of the I.G. carried out examinations of the Italian chemical industry in order to find out how many workers, especially specialists, one could take away and employ in the German chemical industry. The results of these examinations were described in reports to the Plenipotentiary General for Special Questions of the Chemical Production, by whose influence those workers were deported to Germany."

On page 86 of the English at the end of paragraph 12 the affiant says:

"I feel myself fully and wholly responsible for this proposal, just as I accept responsibility for all other proposals which I and other plant leaders with my knowledge have made for the execution of measures for the combing out of the chemical industry of the occupied Western territories for workers who were to be deported to Germany and employed here."

Now just a few more words, Your Honors, and we will pass this document.

Paragraph 13 is significant:

"In the plants of the I.G. Farbenindustrie foreign children from the ages of eight upwards were employed. Official directives, supplied by me via the "Office of Bertrams" applied for the employment and pay of those children. On the other hand, I did not make any proposals of any kind or issue directives or approve credits in order to make sure that schools were being built or that these children were to receive a normal school education."

That, Your Honors, is in contradistinction to the money which was spent by I. G. Farben for other purposes.

In paragraph 14:

"I knew of the fact that prisoners of war were employed in the I. G. Farbenindustrie in either the direct or indirect armament industry." He further admits: "Although I was responsible for the employment of thousands of prisoners of war, I have never read the Hague Convention or the Geneva Land Warfare Regulation."

Paragraph 16 makes reference to the employment of concentration camp inmates, and it is simply stated that after 1941 such employment was customary.

Paragraph 17 relates to disciplinary matters, wherein the affiant states that "irregularities of work, laziness of foreign workers, etc., were first punished by the individual plant leaders by reprimand or by fines, and in case of repetition by reporting the offender to the labor exchange. If this was not sufficient, the Gestapo had to be, and was, informed."

Paragraph 18: "If a transport of foreign workers was allocated to a plant, then this plant had to provide escort personnel from its employment office and guards from its Works Security Police either to the camp of the competent provincial labor exchange, to the frontier, or to the occupied territory where the workers came from, in order to transfer this transport to the plant's own camp."

The next document, if Your Honors please, is NI-6849 which may be marked as Exhibit 1329. This is likewise an affidavit of Christian Schneider, and is found on page 90 of the English and 109 of the German. I should like to refer to paragraph 3 of the affidavit wherein the affiant states that "Towards the end of 1937 the Central Committee appointed him as successor for Prof. Dr. Erwin Selck, carrying with it the position of chief of the advisory board—" that is the U.B., the Unternehmens Beirat, which is translated "Enterprise Advisory Council of I.G. Farbenindustrie," and that he made Dr. Ferdinand Bertrams his expert advisor.

In paragraph 4 he is speaking about the participants in this Enterprise Advisory Council. "Aside from the participants prescribed by the law, the following plant leaders attended regularly as guests: Dr. Carl Wurster, Dr. Hans Auehae, Dr. Ulrich Haberland, Dr. Max Brueggemann, Dr. Georg von Schnitzler, Prof. Carl Lautenschlaeger, Dr. Otto Ambors, Dr. Ernst Buergin, Dr. Fredrich Gajewski, Dr. Max Ilgner; Dr. Walter

Duerrfeld later attended, and Dr. Friedrich Ter Meer "was also present several times."

It is interesting to note in paragraph 6 that preceding every Enterprise Advisory Council meeting there was a plant managers' conference comprising the above-mentioned gentlemen in which: one, all the subjects were tentatively discussed which the Enterprise Advisory Council had on its agenda, and, two, all other problems of a social welfare nature were debated and experiences exchanged which were of possible interest to that kind of a committee.

It is submitted that this shows a broad and detailed knowledge on the part of those gentlemen mentioned as to not only the social welfare policy—but the operation of that policy.

The next document is NI-6095, which has already been marked in evidence as Exhibit 394. This is an affidavit of defendant Carl Lautenschlaeger, 2 April 1947, and is found at page 92 of the English and 113 of the German. Reference is made to page 92, paragraph 2, wherein the affiant is speaking of Enterprise Advisory Council meetings. He says: "Dr. Schneider always took the chair with the exception of one meeting from which he was absent, and at which Dr. Gajewski deputized for him." And then he names the gentlemen who were present.

And on page 93, paragraph 4, it is mentioned that minutes of these discussions were sent to all participants, including Geheimrat Hermann Schmitz, and to all members of the Vorstand.

The next document is NI-2972, which has already been marked in evidence as Exhibit 481, in Book 22. This is an affidavit of Carl Krauch, 22 January '47, found at page 94 of the English and 116 of the German. The affiant here indicates that he was the highest authority for the Allocation of Labor for the Chemical Industry, and that his authority extended to foreign workers, prisoners of war and inmates of concentration camps. He suggested to General Thomas, through Hirschner, that Russian prisoners of war be brought to Germany and employed in the armament industry. He is aware of at least one instance where he transported

foreign workers in transit for weeks who arrived tired, hungry and freezing. He knew from 1942 on that workers were recruited in occupied countries on an involuntary basis... He had the natural feeling that the use of foreign workers by force was not law. He discussed labor conditions with Christina Schneider; whenever foreign workers in individual I.G. plants were underfed their efficiency was impaired. The welfare of the foreign workers employed by I.G. was part of the responsibility of the I.G. Vorstand.

And then he mentions that certain I.G. representatives were his—the affiant's—representatives in Paris, Belgium, Milan and Yugoslavia with respect to the procurement of workers.

The next document is NI-6062, which may be marked Exhibit 1330. This also is an affidavit of Carl Krauch, 14 February 1947, on page 97 of the English and 121 of the German. Affiant Krauch in this affidavit largely discusses the recruiting activities of G. B. Chemie, the assistance rendered by Farben personnel; and it is significant that he notes that members of the Vorstand made wide use of the opportunity to participate in meetings on social welfare matters.

The next document is NI-6376, which may be marked Exhibit No. 1331. This is simply a correctional affidavit wherein Krauch corrects the use of the term "Soko" which he uses, Your Honors, in the previous affidavit.

The next document is NI-6060, which may be marked as Exhibit 1332, found on page 102 of the English and 127 of the German. In this affidavit the affiant recounts several instances of improper conditions observed in such plants—those are Farben plants—of "Eydebreck, Schkopau, and Gendorf. The high rate of sickness among Easterners, insufficient cleanliness of buildings is mentioned. The affiant discussed these matters with Ambors, Schneider, Schmitz, and reported to Schmitz about many other visits, and informed him of suggestions made for improvement.

If Your Honors please, I respectfully ask you to correct, in the

third line from the bottom of the Index, NI-6060: "any--a-n-y" should read "many."

The next document is NI-5953, which will be omitted.

The next document is 5954, which will be omitted.

The next document is NI-6061, which will be omitted.

And that, Your Honors, concludes Book No. 68.

The next document is NI-10029, which has been marked in evidence as Exhibit 47, in Book 2. This, Your Honors, is a very important exhibit which can be used for information as to the precise significance of many, many documents which have been presented, and will be presented, in this case.

DR. DIX (Counsel for defendant Schneider): Your Honors, I should like to make the following observation regarding this document. The Prosecution and the Defense for the defendants Schneider and Bueteufisch discussed this document, and some time ago a stipulation was reached. A correction of the column at the left in this document has already been submitted to the Tribunal and was also given an Exhibit Number. Unfortunately, this correction was not considered in this new insertion of the document, so that again this document gives an incorrect picture. Therefore, I should like to suggest that this left-hand column be stricken. It begins with "Bueteufisch--Leura."

MR. VAN STREET: May it please Your Honors, we will be glad to note that and make the necessary corrections.

THE PRESIDENT: Is that satisfactory to counsel for the Defense?

DR. DIX: Yes.

THE PRESIDENT: Very well.

Pardon me, counsel; the Tribunal is not clear as to whether this left-hand column of this exhibit is to be marked as subject to correction or is to be stricken out. What is the understanding of counsel?

excuse myself for not having called this to Mr. Van Street's attention so he could have avoided this difficulty this morning. I am very sorry.

THE PRESIDENT: Very well.

DR. SEIDL (Counsel for the Defendant Duerrfeld): Mr. President, I request an opportunity to make a very brief comment on this chart.

THE PRESIDENT: Counsel, is what you have to say relating to its admissibility or to its weight?

DR. SEIDL: It does not refer to admissibility, but to a question which seems important to me, and I should like to have an explanation from the Prosecution.

THE PRESIDENT: You may state your position briefly, if you will.

DR. SEIDL: Mr. President, in this document, BI-10029, my client, Dr. Duerrfeld, is mentioned at two points: under "Leuna" and also under Ludwigshafen that is in the square which mentions Auschwitz. In both cases it says "Chief 1941, Dr. Duerrfeld." I do not know what the Prosecution means by the word "Chief". If the Prosecution means Plant Leader, or Manager, I should have to object. From the year 1941 on Dr. Duerrfeld was merely in charge of construction and mounting of machinery. Whether he ever became a plant manager cannot be discussed at the moment.

THE PRESIDENT: Gentlemen, we are taking quite a bit of time over matters that ought to be more expeditiously handled.

Will you please confer with counsel for the Prosecution; if you can agree upon a correction or a modification of the chart or a stipulation as to its use, we will be glad to enter it on the record. If you cannot, we will afford you a timely opportunity to make whatever corrections you see fit. After all, as the President understands, Dr. Struss is yet subject to cross-examination—is he not?

MR. SPECHER: If that is true, I am not certain whether he is with respect to this particular affidavit or not. But could I make one or two observations, because I think they will settle at least part of the question that Dr. Seidl has made?

was signed "Wurster" and the German Document Book in respect to the signature should be corrected to show that it was signed "Wurster" instead of the name that appears thereon. I might say that the same thing in respect to the signature will also apply to the next document which is NI-6315 and which may be marked as Exhibit 1339. This is found at page 36 of the English and 51 of the German. It's a protocol 19 April 1943 of the meeting of the Ludwigshafen management which reported that a check instigated by the local Labor Office shows that 85 per cent of the Eastern Workers are employed in heavy and especially disagreeable work with acids or dirt. Wurster was present at this meeting and according to the original exhibit signed the minutes.

The next document is NI-6349 which may be marked as Exhibit 1340. It's a circular letter dated 19 August 1943 and 21 August 1943 concerning disciplinary measures against Eastern workers. This document is at page 38 of the English and 54 of the German. It's indicated that unexcused absence from work is punished by warning and a fine. In case of repetition withdrawal of meal tickets; that Eastern workers have to work at least 67 hours a week.

The next document is NI-5916, which may be marked as Exhibit 1341. It's found at page 41 of the English and 58 of the German. This is first a list of workers from Rhone-Poulenc to Ludwigshafen, December 1942 to December 1943 and, two, letter to Ludwigshafen transmitting the list of French workers from Rhone-Poulenc who arrived between September and November 1942. This document is purposed to show the example of the transfer of foreign workers to Farben in groups and it will be remembered by the Tribunal that defendant von Schnitzler in his affidavit, NI-5190, which was marked in evidence as Exhibit 1324, mentioned that Ambros arranged for groups of workers to be transferred from Rhone-Poulenc and this matter will be referred to again hereinafter.

examination. If the chart is offered in evidence, we will afford Counsel for the Prosecution an opportunity to make the objection, and while I may say that to follow the testimony of the witness members of the Tribunal have what purports to be a copy of a chart, if it is not offered in evidence, we shall not consider it and return it to Counsel for the Defense.

MR. VAN STREET: Thank you, Your Honor.

MARCEL GRENOT - Resumed

CROSS EXAMINATION - Continued

BY MR. HEINZLER:

Q Witness, is it correct that your work in the electrical department began officially at seven o'clock in the morning?

A Yes, that is correct.

Q Is it correct that the prisoners of war frequently began work only at approximately 7:15 or 7:30 in the electrical department?

A That is not correct. We left the camp at six o'clock in the morning in order to be able to arrive at the camp in time, and sometimes even ahead of time.

Q How do you explain the fact, witness, that you had to leave the camp at six o'clock if you wanted to reach the electrical department by seven o'clock?

A We had three-quarters of an hour of march to get to our working place; there were about two miles.

Q Witness, may I ask you to look at this chart once more? May I ask you to compare camp number 5 that you described this morning and building number 72 in whose proximity the electrical department was situated as you said?

A Well, and what about it?

Q I continue. If you take the scale into account, 1 to 5000, then you can see that twenty centimeters on the map represent one kilometer on the ground, and it furthermore can be seen that the straight line from camp number 5 to building number 72 is about twenty-four

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centimeters. That would mean that the straight line amounts to a little more than one kilometer, as the crow flies.

A Yes, but you are taking only the direct distance, the air distance. You are not taking into consideration at all the detours we had to go through when we went through the factory. They were considerable.

Q. Did you at that time always route through the factory?

A. Well, certainly; I never took a plane to go there.

Q. You could have taken the way around the plants until you got to the building Number 72. You could have passed right around the plant....

A. We always went through the interior of the factory, and even if you want some details: we went through the gas factory.

Q. Even including all reasonable circuitous routes, could then your route from the camp to building 72 amount to more than two kilometers?

A. I think it could have been more. May I ask something?

THE PRESIDENT: The witness will merely answer the questions that are propounded by counsel.

Q. Witness, may I ask you to describe the beginning of the day in the camp, briefly? At what time were you awakened?

A. Reveille in the camp started as early as four o'clock because some working details left very early to cut wood, or whatever work they had to do. We personally had to wash and have our breakfast and then we left either at six o'clock or at five past six-but, anyhow, we always arrived at our working location before seven o'clock in the morning.

Q. Were these working groups of Farben which were awakened already at four o'clock in the morning?

A. Yes, they were.

Q. Did their work also begin at seven o'clock?

A. The work details started earlier than that; some started at six o'clock, some even at five o'clock. We did not all have the same working hours—at least not the same hours when we started.

Q. Were there any amongst your comrades who worked in shifts?

A. No; usually those who left at five o'clock in the morning never came back before seven or eight in the evening.

Q. Do you know how long these comrades of yours were permitted to recess?

A. Usually they started their work at seven o'clock in the morning, and at twelve o'clock they would have half an hour off for lunch; then they would start work again until seven o'clock in the evening.

Q. I believe you did not understand my question correctly. I should like to remind you of the fact that in the chemical industry—and certainly in France, too—there are certain workmen who have to work for twelve hours on end, and then be permitted twenty-four hours rest. Were those comrades that left for work at five o'clock used in that way?

A. They were employed in that way as far as the getting up at five o'clock and coming back at seven o'clock goes, but they had just the night to rest. They did not have a day off.

Q. How long was your lunch period? The one that you had?

A. Half an hour.

Q. Is it correct that working hours officially were over at five forty-five in the afternoon?

A. I don't know whether that is officially correct, but anyhow, I know that most of the time we stopped at half past six, a quarter to seven—starting at seven o'clock in the morning.

Q. Were you together with other workers in this electrical department?

A. The foreign workers in this department were exactly: 2 Italians, 2 Poles, and 3 Frenchmen. Very frequently, the German workers would go away at a quarter to six, or six o'clock, while we would stay with the foreman til six-thirty—or, I would rather say, a quarter to seven or seven o'clock. I would even say the earliest we got away was a quarter to seven in the evening.

Q. Were these Poles and French voluntary workers, free workers,

or were they prisoners of war?

A. No; the arrangement was that prisoners of war would always work together with prisoners of war, and French free workers would work with other free foreign workers.

Q. Did you ever complain to the plant management about the duration of working hours?

A. Very often we approached our spokesman with complaints, which were passed on to the management; but we never received an answer.

Q. This spokesman--was he a French prisoner of war himself?

A. Yes; the spokesman was a French PW himself. There was a French spokesman, who was a French PW; and there was a Polish spokesman, who was a Polish PW. Those are all the spokesmen I know about.

Q. And to whom did the spokesman turn: to the German Army Camp Management?

A. No; the spokesman would not approach the camp commandant because this was not a matter of discipline or of disciplinary affairs. It was a matter of the working hours--not of the work--and, therefore, he would go to the factory itself, and would go to see somebody of the management. I am afraid I cannot tell you who.

Q. Witness, even if I assume that your recollection is not somewhat dimmed, according to what you said just now, how do you arrive at the working time of twelve hours, if you take the lunch hour into account?

A. Counsel is correct; the twelve hours would refer to actual presence at work. But if you deduct half an hour off at noon for the meals you will arrive at only eleven and a half hours--but I think that is quite a bit, still.

Q. But even those eleven and a half hours were only on the worst days?

A. No; all the time.

Q. Witness, didn't you say a short while ago that you left your working place at six-fifteen or six-thirty or sometimes a quarter

to seven?

A. It is quite correct that I said that, Counsel. But that was not all the time. Most of the time we would stop at seven o'clock, and then you have forgotten what I also said; namely, that we would not arrive at seven o'clock in the morning, exactly. We arrived before that and we would start working when we arrived—sometimes at a quarter to seven in the morning.

Q. Witness, you say in your affidavit that you were employed in very hard work. May I ask you to describe the type of work you were doing in the electrical department?

A. If you take work in the electricity department, and you take, for instance, that we had to lay electric lines and electric cables—electric cables in big containers for acid or for gas or for chemicals; and that we had to work between two walls where you had very little space, and you had to lay those lines—I consider that very hard work. I quite grant you that it might not be as hard work as if we had to work at a stove, and all that; but in the weakened condition we were in this work was extremely hard.

Q. Did you participate in clearing work, after air raids, occasionally?

A. Yes; we had to take part in those clearing operations and clearing up rubble, help to reconstruct; and most of the time we laid electric cables right after the attack, under conditions which, if the Court permits, I can only term as damned dirty.

Q. Witness, isn't all this work which depends on the good will of the person employed, whether he is very hard-put to it or whether he has an easy time of it?

A. First of all, the kind of work I was doing down there had nothing to do with the work I was used to doing. It was not my work. Secondly, I was a prisoner of war and it was not at all to my taste to work there; I didn't like it at all. Thirdly, I was a non-commissioned

officer and I was not supposed to be made to work at all. So I had no heart for that work. And I have to repeat that it was not the kind of work I was used to. Even my comrades, who had done the same kind of work in Franco, never had to work under the same bad conditions.

Q. Witness, did I understand you correctly: that your description in the affidavit is to be traced back to the fact that you did not work willingly and that you did not work joyfully—which of course is understandable?

A. Yes.

Q. Thank you. Witness, may I ask you something about the guards? Is it true that camp Number 5, in which you lived was guarded by the Army?

A. Yes; that is correct. The camp was guarded by the Wehrmacht.

Q. It is correct that you were subordinated only to the authorities of the Army inside that camp?

A. In the camp, yes; that is correct.

Q. Is it correct that civilians could enter this camp only with the express permission of the authorities of the Army?

A. Certainly; they came in because these civilians came and fetched us for the work; but whether they had a special authorization or not I couldn't tell you. I failed to ask.

Q. Witness, is it correct that at your work at the Farbon plant you were not guarded at all, practically?

A. Well, all the guards we had were, first of all, the foremen who brought us to the factory; then the plant police inside the factory, and then, also, the Army guards who were distributed all over the factory. And if something happened or something was wrong they could be called. But, otherwise, we had no supervision.

Q. Did I understand you correctly: that you were led to your work from the camp by these foremen?

A. Yes; that is correct.

Q. Is it correct that these foremen came as civilians and did not bear any arms, or something like that?

A. That is quite correct.

Q. Witness, were you very frequently controlled by the patrols of the Army in your plant?

A. Generally--no, but whenever something happened that was out of the ordinary they would be called.

Q. In the course of your work in the plant, were you controlled frequently by what you called Police de l'usine (the Plant Police) in your work?

A. I don't quite see your question. I am sorry.

Q. I believe the question is very simple. Were you, Mr. Witness, frequently controlled by the Police de l'usine (the Plant Police) in your work?

A. I never recalled the factory guards "factory police."

Q. Witness, in your affidavit you used the expression "Police de l'usine"-- Plant Police?

A. Yes; I understand that quite well. I called it Police de l'usine, but I never called these factory police guards.

Q. Perhaps there is a misunderstanding. Is the same denoted by factory guard and Police de l'usine?

A. No; the factory guards were the guards of the armed forces in the factory, and the "Police de l'usine" is the factory police.

Q. Then perhaps I may repeat my question. Were you, Mr. Witness, controlled very frequently by the factory police, which is called Police de l'usine, in French?

A. I see your question now. We were guarded; we were under the surveillance of these factory police constantly, and they saw to it that we would remain in the sector of space allotted to us; and if we overstepped the bounds they would bring us back, sometimes with a kick; they had pistols too.

Q. Witness, was this Police de l'usine a State police which was stationed in the plant? Or was it an organization of the factory, as far as you know?

A. According to my own view, this factory police was a factory organ and paid by the factory.

Q. How do you know that, Mr. Witness?

A. Counsel asked whether, according to my conception, they were a State agency or a factory agency--and I answered counsel's question that, according to my conception they were a factory agency. I never asked whether they were; I never had any official notice about it.

The next document is NI-5915, which may be marked as Exhibit 1342. This is found at page 52 of the English and 73 of the German. This is a note, 1 July 1943, from the personnel department at Ludwigshafen. It states that two French workers who tried to escape had been returned to the plant and had received a reprimand with a warning that if they tried to repeat they would be transferred to the plant - owned labor education camp. In the last sentence Your Honors will note that "AEA" is mentioned and these are the initials for the German words which may be translated according to my understanding, "Labor Education Camp. "

The next document, is NI-5912, which may be marked as Exhibit 1343. This is found at page 54 of the English and 74 of the German. This is a letter of 17 November 1943 from Ludwigshafen to the Counter-Intelligence Officer. This letter requested agreement with, -- if your Honors please, I would like to correct the index to read not "special treatment" but "preferential treatment" -- , for two named Russian prisoners-of-war. Their knowledge and background could be useful to I.G. and in order to maintain their work efficiency they should be treated better than the rest of the Russian camp inmates. On page 55 of the English and 75 of the German in speaking of one of these men it is noted that the following statement is made: "Andrejew particularly seemed to suffer from shock caused to by air-raids and asked to be allowed at least to go to an air-trench shelter in case of air attacks, which apparently will not be possible due to lack of space. "

Then on page 55 of the English and 76 of the German it's stated that "In my opinion it would be advisable that the transfer of Andrianow and Andrejew to Herr Friedmann to make it clear to both of them, particularly to the gossiping Andrianow, even in writing if it need be, that if they will not fully employ their skill in the Tatarinow process in their work they will be used for less qualified work than their up-to-date employment in the laboratory and that, under rescision of all eventual preferential treatment in the camp. "

(Dr. Heinzeler)

Q. Then it is an assumption on your part?

A. It is an assumption, but there are reasons for my assumption. First of all they did not have any special uniform; they did not have any insignia, and they did not look like regular policeman, or security police. All they were was a sort of a suit, out in a military fashion. That is all.

Q. These people whom you termed "police de L'usine" didn't they wear any uniform then?

A. They did not have a regular uniform. They did not have a police uniform, or anything of the kind, but they were not dressed as civilians either, so you might say they had a kind of a uniform.

Q. Witness, were they uniformly clothed?

A. Yes, they were.

Q. Do you remember the color of that clothing?

A. I think it was navy blue, and a colored cap with a red band around it.

Q. But you are not quite sure, witness?

A. No, frankly, that is two years and a half ago; that is too much for my memory.

Q. I understand perfectly. Were these people armed?

A. Yes, they had a pistol.

Q. Did these people wear armbands on which there was the term, "Wehrmacht" or "police"?

A. No. I am certain that it was not Wehrmacht, at least.

Q. You do not remember any such armband?

A. I do not remember; I would rather say the truth, I really cannot remember.

Q. Witness, I now turn to the question of mistreatment. I am very much interested to clear up what really happened.

Were you, yourself, unfortunate enough, Mr. Witness, to be mistreated?

A. So far as my personal experience goes, I remember that one day when I was engaged in helping to build a concrete shelter, I was supposed to carry a bag of concrete-a big sack of concrete, of about 110 pounds weight, and as I refused to carry it, the German foreman hit me in the face with his fist, and as I was too weak to carry it, and wouldn't carry it, he went to call the factory guard, - that is the guard of the Armed Forces, and I was then forced to carry the bag all the same.

I have not quite finished. On the other hand, I know that not one day passed, where comrades of mine would not come back in the evening showing in their faces or on their bodies the bruises of hits and kicks they had received during the day.

Q. Witness, you have already answered another question, but we can stay with it. How do you know that these marks that your comrades showed were caused by a mistreatment by Germans?

A. I would answer with a counter question. Where do you think these marks came from? But anyhow, my comrades when they came in in the evening would tell me that they had received them from a German, or from a foreman, and when I saw these blackened eyes and flattened noses I think they spoke the truth. After all, they hadn't any reason to lie about it.

Q. Witness, if I understood you correctly, you are speaking of one particular event, one evening when your comrades returned with these marks?

A. It is no use to try to distort what I say. I expressed myself quite clearly. I said that it was every

day almost and not just once; not a single day would pass without one of my comrades coming back with marks on their bodies and on their faces, and I think out of 1000, 900 certainly made that experience.

Q. Witness what did you yourself undertake after you had been mistreated? To whom did you turn?

A. All, and I in this particular case too, approached our spokesman; we all did that, and you could complain as long as you wanted to, it was just like a drop of water in a bathtub which has a hole.

Q. Witness, I know that French soldiers were very comradely generally; but it is quite possible that some sort of trouble might arise amongst French soldiers too, that they might hit each other?

A. In France, counsel, that would be quite likely; it would have been possible, but when you are a prisoner of war in a foreign country, then you stick together and I can guarantee that we never beat each other up.

Q. Witness, do you know that the Farben plant in Ludwigshafen was known in France as one of the plants in which living and working conditions were especially good, so that many French workers reported voluntarily to go to Ludwigshafen?

A. I am afraid that I have to admit that I had no knowledge whatsoever with regard to that factory. It is true that it was not in my branch, and that therefore when I arrived down there at the factory, I had not the slightest shade of knowledge about it.

Q. Did you never get in touch with free French laborers in the course of your work?

A. I have already testified that so far as the actual working was concerned, I worked only with prisoners of war.

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The prisoners of war would work on one side and the free workers would work together in another department, but of course I cannot say that I have not seen any. I have seen free French workers, but they did not work together with me.

Q. By my question I intended to find out whether you did not speak to the free French laborers, - free French workers?

A. Yes, of course; that was not prohibited.

Q. Did you ever meet any free French comrades who had been attracted by this plant in Ludwigshafen at the time?

A. They never told me about it.

Q. You certainly discussed life in Ludwigshafen with the free Frenchmen didn't you?

A. Certainly we discussed it, but there is one thing you must not forget. I came in 1944, and even if we admit that some of these French workers were very pleased to come down there in 1942 or 1943, I can guarantee in 1944 they were far from satisfied and pleased. They had only one idea, to escape, because they were sick and tired of working down there.

Q. Witness, I want to ask you this question; isn't it a rather relevant fact that the war and the air raid incidents intensified and made life in Ludwigshafen different from that it was in 1942 or '43? Didn't that play a particular part in this change in the attitude?

A. I don't think so, because when I arrived in '44, we did not even have a single bomb attack, air raid attack, yet. The factory was completely untouched and the life in the factory, with few exceptions, was about what it had been in '42 and '43. I told you already, in much detail, about the first attack having taken place on the 26th of July, but I have also explained that the real air attacks only took their full rigor in September and October, and therefore I had more than two months to discuss this with these workers before the attacks actually started.

Q. Witness, don't you know that on the 7th of September, 1943, for instance, one of many air raids took place which also hit the Farben plant in Ludwigshafen?

A. It is quite correct that there were air raids even several of the, but one air raid in itself does not produce much effect on a factory like Ludwigshafen. It is only the systematic attacks which actually paralyzed the life there, and it took more than 60 consecutive attacks to actually break the factory down.

At the time in September, '43, or whenever it was, this might have been the 10th or 12th attack, and from what we were told in the factory, the factory still worked with an output of 70 to 80 per cent.

Q. In this production of 70 per cent, you certainly noticed traces of previous air raids when you arrived, didn't you?

A. I have already said that the factory was very little touched. I would even say hardly touched at all, hardly damaged when I arrived, and I even noticed that and it struck me as very peculiar. Of course I never received official reports from the management, but from what I heard there, compared with the prewar status, the factory worked at 90 to 95 per cent of the output.

Q. Witness, I believe we can leave this point. Please be kind enough now to say something about this group, that mysterious group of 12 French workers of whom you said that they worked through the Cloche A Gaze?

A. Well, what I said in my testimony is 100 per cent correct, and I assure you if I speak of 12 workers, I am still very nice to you. Most of these 12 workers had tried to escape and had been arrested by the German Civil authorities and had been turned over to the factory police.

They were real skeletons, and we tried to get some food to them; then we would be beaten up. They worked, as I said, in a gas purifier. I do not know whether you know the working of a gas purifier but what they had to do was: The tar in the gas purifier becomes decomposed while the gas is being purified, and they had to take this decomposed tar out with cans. It was very dirty work. They had to work all day in there, and they looked completely black when they came out.

Q. Witness, are you describing a gas container; the Cloche A Gaze is not quite known to me?

A. I know that is is not quite clear, because I am not quite familiar with all of these technical terms, but I can try and describe it to you. Those are big gas containers where thousands of cubic feet of gas are compressed, the gas passes through the water, and the tar is deposited on the ground. These containers furnish the gas to the whole town; they had to take the tar out of these containers. It is a gasometre. That is the French Term. I remember now.

Q. Witness, when you saw these French civilian workers, do you know how long they had already been in the factory?

A. From what they told me, I knew that they had arrived in Germany in '42 or '43; that they had tried to escape, and that they had been sent to that factory as a measure of punishment for an indeterminate period. That was a punishment; that is true.

Q. But witness, you do not know where these pitiable countrymen of yours became so emaciated that they looked like skeletons, - whether that happened in Ludwigs-hafen or had already happened before?

A. I am quite certain that that was at Ludwigs-hafen because they told us, because when we saw them in this skeleton-like condition, we asked them who did it, and they told us that they had become like that at Ludwigs-hafen.

Q. Did these compatriots of yours say anything about the fact of who shaved their heads? And where that happened?

A. I do not know, but they were captured when they tried to escape. I do not know whether by the civilian

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police of by the Gestapo; they were captured by the civilian
authorities and their hair was shaved off and eventually
they were sent back to the factory to work on the punishment
detail.

Q You cannot say anything about the fact whether the factory is responsible for the regrettable condition of these prisoners? Witness, it's just not a question of fact but a question of responsibility. Please take that into account and weigh your words carefully. I am sure you don't want to be in any way partial.

A I said I will weigh my words very carefully. Whoever shaved their hair off is of very little importance. The fact remains that they worked for the I.G. Farben, that they worked in the factory and that they worked for the benefit of I.G.

Q Witness, it's your function and forgive me if I define it briefly, it's your function to testify to facts and it's the function of the Court to decide what's important and what isn't important. Do you know who was responsible for shaving the heads of the prisoners? Yes or no.

MR. VAN STREET: May it please your Honor, I would like to note at this time in all sincerity I think defense counsel has sort of brought this upon himself by asking the witness as to who was responsible. I think, frankly, that that is a little bit beyond the scope that this particular cross examination should take and I think it's possibly beyond the ken of the witnesses experience and ability to say.

THE COURT: That would probably call for a conclusion. The simpler and more direct way would appear to be to ask the witness if he know who shaved the heads of the prisoners.

DR. HEINZELER: Mr. President, I believe that to be the way I defined and formulated my question. Witness, would you please answer that question? Do you know who shaved the heads of these countrymen?

A No.

Q Thank you. Witness, I have one more brief question.
Who drove these 12 Frenchmen with gun-butts to work?

A That was the factory police, the same who guarded us in the factory, the same who were at the gate when we came out and who would search our pockets to see whether or not we were taking something along. At least they had the same uniform.

Q Witness, did you say previously that what you called the "factory police" were armed with pistols?

A Yes, that's what I said.

Q Isn't it a contradiction if you call these things "gun butts"?

A I don't see any contradiction at all because these factory policemen who pushed these men to work, apart from their pistols, carried rifles.

Q Witness, we turn to another case which is still very unclear to me. That is the case of your compatriot who was killed when he wanted to take potatoes from a railroad-car. Can you tell me first of all, on the chart where this event happened?

A I think that approximately I will be able to show it to you on the plan, approximately. It was on a railroad track leading from the gas factory to the gate where we went out so if you can find the gas factory on the plan then I will be able to show it to you.

Q Witness, do you have this map?

A Can you give us the number of the gas factory?

Q Witness, it's best when you start from the gate, the entrance to your Camp No. 5

A If you go down directly from this door then on the

Your Honors are asked to note that a copy of this went to defendant Ambros and that the significance of this document so far as the Prosecution is concerned, it is submitted, is that it was possible to improve conditions if Farben so desired and that though self-interest; they could if they chose improve the conditions of certain workers. It is submitted, your Honors, that this entire document is very revealing and that it must be noted carefully.

The next document is NI-9091 which may be marked as Exhibit 1344. This is found at page 57 of the English and 77 of the German. I am having handed to your Honors a more legible copy of this document than appears in the document book. I am likewise having handed to representatives of defense counsel copies which are likewise more legible than the ones which appear in their book and at the same time I would like also to have handed more legible copies of the next document which will be introduced, NI-9092, to both the Court and defense counsel.

THE PRESIDENT: I need no German copy here.

MR. VAN STREET: That's right, your Honor. Your Honors, this is a chart dated — I am speaking of 9091, which has been marked in evidence as Exhibit 1344. This is a chart dated May 1943 and it will be noted that there is attached a copy of a letter of transmittal which is signed Hurster and which is directed to Dr. Kaphan, Hannover. I understand that Dr. Kaphan was President of the District Labor Office in Hannover. Now, this letter has been translated and is in your Honor's book at page 59 and you will also find at page 60 of the English a translation of all of the terms which are used in this particular document. Now, if your Honors please, I will make brief reference to this document.

JUDGE MORRIS: I think the letter appears at 58 and the glossary of terms at 59 in my book.

MR. VAN STREET: Thank you, your Honor. In mine it's 59 and 60 but we have noted that. Thank you, sir. Now, I am holding this chart and your Honors will note on the extreme right there's a group of broken

map and you go until about an inch from where all these lines are, about two inches from the Rhine, then go to the left on the map about three inches and then you go up in the direction of building 72 where the building was, and you find the railroad line and it must have been in that direction.

Q At what time of the day did this event take place?

A Towards four or five o'clock. We were there on a work detail and we worked there and we were so hungry that when we saw these freight cars had arrived with potatoes one of us went and tried to get some potatoes down.

Q Was that a prisoner of war, one of your comrades?

A Yes.

Q Witness, can you tell me exactly what day it was?

A No, unfortunately I am in no position to do so.

Q Approximately the month?

A Well, just a minute; I am trying to remember. It must have been November.

Q Was that a comrade of your work detail?

A At least on that day he was.

Q Do you still know the name of this comrade?

A No, but I can get it for you if you want it. Yes, because the Chaplain still has that name.

Q Did you, yourself, observe how your comrade was shot?

A Yes, I was there. I was there when he was wounded. He wasn't killed right away.

Q And who fired the shot?

A It was a shot from a pistol and it was a factory policeman; always the same people.

Q Did you, yourself, see the person who fired the shot?

A Yes, I have.

Q How far were you removed from this incident?

A Thirty yards, forty yards; something like that. Perhaps not even that. Perhaps the distance from here to Dr. Dix.

Q Was this comrade of yours at the moment when he was wounded on top of the railroad car? Or near the railroad car or where was he?

A He was down on his knees on the freight car in order to take some potatoes.

Q Where was this comrade taken after he had been wounded?

A My comrade, after he had been wounded, had enough strength left to drag himself back to the camp on foot. He then went to the camp dispensary, went to bed there and was brought to the hospital two days later and died exactly six days after the incident.

Q What type of wound did he receive?

A He received a shot in the thigh, no, he received it very near the hip. I don't know the exact location, no.

Q Do you know to what hospital he was taken?

A I don't know what hospital he was brought to but I know it was in Ludwigshafen itself but I can get that again from the Chaplain.

Q He died in Ludwigshafen?

A Yes, at Ludwigshafen.

Q How do you know that he died? From hearsay?

A No, I wouldn't call that hearsay? It was the camp chaplain who went to see how this comrade of mine was doing and when he came to Ludwigshafen to the hospital he was told that he had died two days before. When he came back to the camp he informed me of it as well as my comrades.

Q Witness, this morning in your addition that you

made to the affidavit you also spoke of the wounding of a Russian. Would you please repeat this incident briefly? It was hard to understand this morning for reasons of translation.

A There was a cistern which had arrived and the Russian was laying on the ground trying to get some liquid out of it and a factory policeman without warning shot at a very small distance. The truth that he shot at a very small distance is that he shot him at the same time through the hand and through both legs.

THE PRESIDENT: If counsel please, it's time for our afternoon recess.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.
BY DR. HEINZELER:

Q Witness, I should now like to put a number of questions to you which concern air raid precautionary measures involving prisoners of war. Whenever you were working at the plant and were surprised by an air attack, could you not use the same air raid shelters as were used by German workers and foreign workers of all other nations?

A That is correct. When we were working in the factory, we were entitled to go to the same shelter as the other workers.

Q Whenever you were surprised by air attacks after work, you are saying that you either had to stay in the camp without protection or you had to walk 7 kilometers to a bridge which meant that you had to cover 14 kilometers a night. My first question: Can you not remember that in the camp itself there were concrete shelters?

A These famous concrete trenches, as you call them, in the camp were exactly about eight inches thick. They were about like half a wine barrel and even an incendiary bomb dropped could go through. They were about eight inches thick, as I said.

Q Witness, if you didn't feel secure in these trenches, is it not true that about four hundred meters from the camp, there was an air raid shelter, a very sound air raid shelter, where prisoners of war of Camp 5 could go?

A Counsel is correct if he says that this shelter, four hundred yards from our camp, existed. However, from July to October 1944 - and there I come back to my affidavit - from July to October 1944, we had no right to use this shelter or to go there. Therefore, as I stated in

my affidavit, during this period from July to October, we had to go and walk about nine to ten miles during the night to get to that bridge at the dead of night, leave the bridge again at three o'clock to get back to our camp at four o'clock in the morning.

Q Witness, during the night, is it not true that the Wehrmacht had responsibility for the protection of prisoners of war?

A That is quite correct, but we had applied to the factory management, as a matter of pity for us, after this famous attack of the 26th of July when we lost eighty-one dead during this attack, that they grant us permission to use the shelter in the factory, and this was refused and it was only, as I stated before, in October 1944, that we eventually received permission to use the shelter in the plant.

Q Witness, do you not know that the plant management intervened with the Wehrmacht to see to it that prisoners of war could go to the shelter near the factory?

A I don't know the facts there, but I do know, in spite of the fact that it might be possible that the factory management took measures in order to obtain this permission, that for three months we were not granted the permission and that for three months we could not enter the factory. The gates of the factory were closed to us during the night and we had to go these ten miles to the bridge when we wanted to have shelter.

Q Witness, I am now turning to the question of the ten miles which you had to go during the night and to the question of the air raid shelter near the unfinished bridge. Wasn't this air raid shelter also preferred by the civilian population because it had the reputation of being especially

secure?

A No, that's not quite correct. We were obliged to go down there because we had no other place to go. Now, in order to specify these nine miles - that's, of course, both ways.

Q Witness, my question was this. Is it not true that this shelter near the unfinished bridge was particularly favored by the civilian population?

A First of all, the population didn't come to this shelter. They had built houses and wooden barracks under the bridge too, and we were actually lodged in the supports of the bridge and we were about five hundred in the shelter under the supports of the bridge.

Q Witness, let me put it quite clearly. Weren't there many civilians who spent the night beneath the bridge because they considered that place to be particularly safe?

A It's quite correct that there were quite a number of civilians coming there to find shelter, but to say that there were many of them might be slightly exaggerated.

Q Witness, in your affidavit you stated, and you confirmed it today, that the way from the camp to this bridge amounted to approximately seven kilometers. Do you still maintain this statement if I now put to you that, according to the map, the way across the fields exactly amounts to two kilometers and the way along the street only 2.40 kilometers?

A I don't think that is correct, counsel, because very often the planes would arrive at eight o'clock in the evening and we would start out for this shelter and we would take three-quarters of an hour to an hour while we were walking double time.

Q. Witness, I believe that this question can be settled at a later stage of the proceedings, because nothing has changed since.

I should now like to turn to your testimony regarding nourishment. Who cooked for the prisoners of war in Camp No. 5?

A. In our camp Polish prisoners of war were the ones who cooked and they were supervised by German bosses.

Q. Were not the agencies of the armed forces supervising the cooks?

A. Surely. As a matter of course the soldiers were guarding the kitchens.

Q. Witness, you said that "the nourishment we received and which was supplied directly by the I.G. was absolutely insufficient." Isn't that in contradiction with what you just said? Was it directly by the I.G.?

A. I am perfectly convinced that, as I stated in my affidavit, our food was furnished directly by the I.G. Farben. First of all, the food with which we cooked in our kitchens was brought to the camp by civilian trucks of the I.G. Farben. Also the I.G. Farben received our ration cards to provide that food. I have to add that normally we should have been fed exactly like German civilians and should have had the same rations. On the other hand, at noon we received our food in the I.G. Farben canteens.

Q. Witness, if I may lay aside for a minute the question of responsibility for nourishment, whether it was the Wehrmacht or the I.G., then let me ask you now a few questions with reference to the quality of your food. What, for instance, did you receive for breakfast?

I beg your pardon, witness, I asked you about breakfast.

A. In the morning we would receive a cup of hot coffee, if that is what you care to call it. At noon we received soup. In the

evening we would receive one boiled potato and a slice of bread, and once or twice a week we would receive a tiny little piece of meat which was hardly edible. On the other hand, we did receive beets, as many as we wanted, "rutabagas".

Q. Witness, if I put to you that menus of Camp 5 dating back to July 1944, are still in existence according to which you received twenty-five grams of butter or margarine every morning for breakfast, do you still maintain your description?

A. Well, I agree with Counsel. I have seen these menus, too. Unfortunately, there is always a considerable margin between what is posted up there as the menu and what we actually got. I am very sorry to have to put the dots on the "I", but when I was a civilian worker at Stolp, I worked in a furniture factory, and there I happened to get the ration cards to which I was entitled, and I could very well see the difference between the rations I was actually entitled to and whatever I actually got in the camp.

Q. Witness, do you think it is entirely out of the question that this unpleasant memory about your time as a prisoner of war deceives you somewhat in this case as in the case of the distance of the bridge?

A. The simplest answer to your question, Counsel, is that if I had received sufficient food, I would certainly not have fallen ill of hunger edema, and I might add that if we hadn't received also American gift parcels and Red Cross parcels and even parcels from our own families who had deprived themselves of food to send it to us, many of us wouldn't be in the condition we are in today, and quite a number of us would have been dead because of the lack of food. Also, I have to add that from the moment of my arrival at Ludwigshafen until I was liberated, a thing which never happened to me before, I lost between fifteen and sixteen pounds.

Q. Witness, in your affidavit you described the hygienic conditions of the camp and you admit that at the beginning of your stay

in the camp, those conditions were rather good. You go on to say that towards the end of your stay in the camp hygienic conditions were rather deplorable. Did air attacks have anything to do with this change, witness?

A. Yes, that is correct.

Q. Is it correct that after the destruction of the municipal water supply, the I.G. brought water in tanks to Camp 5 and laid a water cable in order to assist the prisoners of war?

A. That is correct as far as the kitchen was concerned. However, we had to use water out of a water tank inside the camp which was kept there to fight fire in case of dropping incendiary bombs, and for more than one month we had to use that water there.

Q. Did you gain the impression, witness, that at that time you were worse off with reference to water supply than the German civilian population in destroyed cities?

A. I couldn't tell you because at the time I didn't see the other German towns. What I do know is that they had established a sort of a pipe which was quite insufficient for us which served only to supply the kitchen with water.

Q. Witness, you then go on to say that "medical care was given to us exclusively by French doctors who were prisoners of war." Do you think that that meant a particular hardship that doctors of your own nationality cared for you?

A. No, certainly not.

Q. You then go on to say that "the I.G. Farben never did anything to take care of us." Do you remember the spokesman of the French Prisoners of War? As far as I am informed, it was a lawyer.

A. I know that his name was Agnes, but perhaps the man who preceded him was a lawyer, but I don't know.

Q. Do you know, witness, that the plant management of the I.G., Ludwigshafen, through negotiations with the Wehrmacht succeeded in seeing to it that French prisoners of war together with other prisoners of

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other nationalities could participate in concert shows and showing of French films, and that the spokesman of French prisoners of war expressed his gratitude for that favor publicly?

A. No, I had no knowledge of that.

DR. HEINZELER: Thank you. I have no further questions.

vertical columns. Looking down at the bottom of the chart it will be noted that these broken vertical columns refer to I.G. Farben Ludwigshafen. The group of broken vertical columns immediately to the left of the group just mentioned, refers, your Honors will note, to the entire chemical industry. That is, the chemical industry as a whole. Now, reference is made to the second classification reading from the bottom of the chart, which in German reads "Kriegsgefangenenanteil", meaning "percentage of prisoner-of-war." Now, referring to the column on the extreme right it will be noted that Ludwigshafen's personnel was made up of 5.57 per cent of prisoners-of-war whereas the chemical industry as a whole employed 4.05% per cent prisoners of war. Are there any questions, your Honor? (no response) Going to the classification immediately above the one just discussed which reads in German "Auslaenderanteil", meaning "percentage of foreign workers", we see that Ludwigshafen, represented by the column on the extreme right, had in its workers constituency 37.41% foreign workers whereas the industry as a whole had 31.4%

Now, coming down, your Honors, to the first category from the bottom of the chart, reading from the bottom of the chart, we have the German term "Einberufenenanteil" which, when translated, means "percentage of employees in the armed service" and here we have a converse ratio for Ludwigshafen. The percentage of its employees in the armed forces was 37.36% whereas the percentage of workers in the armed service for the entire chemical industry was 48.056%. That document is purposed to show the war importance of the Ludwigshafen operation as indicated by the relatively small or smaller percentage of their workers called to the armed forces and also the apparent influence of Ludwigshafen and I. G. generally in being able to get or avail themselves of more foreign workers and prisoner-of-war, than the entire chemical industry.

The next document, if it please your Honors, is NI-9092 which may be marked as Exhibit 1345. This is found at 62 of the English and 79 of the German and may be passed by simply remembering that it shows the personnel standing or status of Ludwigshafen from 1931 until July 1943 and it shows that the personnel climbed from a low in 1933 of a figure in the neighborhood of five thousand to a figure of approximately 24,000 in 1943.

The next document, is NI-2831 which may be marked as Exhibit 1346. This is found at page 66 of the English and 80 of the German.

DR. BERNDT: Dr. Berndt for the defendant Ter Meer. In the index its indicated that the letter read just now of 26 February 1945 was directed to my client, the defendant Ter Meer. This address is evidently quite wrong since the defendant Ter Meer was in Italy beginning with 1 February 1943. This letter is directed to the TRA Office and it's possible that a certain part of it was classified for Dr. Ter Meer but the letter as such was not sent to my client Dr. Ter Meer.

MR. VAN STREET: If your Honors please, defense counsel is entirely correct. The observation that he has made and we had already corrected the index accordingly.

THE PRESIDENT: Very well.

MR. VAN STREET: In other words, the index should be corrected to "Copy of Minutes of Meeting, 26 February 1945, signed by Wuerster and sent to Director Dr. Ter Maer," and it has the TEA Bureau stamp, "26 February 1945" which is the date of receipt. This document would indicate to anyone to whose attention it came that in a meeting of 20 February 1945 of the Ludwigshafen management the Regional Labor Office's request for 15,000 of Ludwigshafen laborers for entrenchment work had been declined and that the reasons for the refusal was the decisive importance of Ludwigshafen production for war and because 4,000 workers had already been given up for entrenchment purposes. This document is purposed not only to show the way importance of the Ludwigshafen operations but if it may be submitted that in the prosecution's opinion it might indicate that Farben was not afraid to disagree with Nazi or governmental authorities when its interests were being served.

The next document is NI-7502 which may be marked as Exhibit 1347. This is an affidavit, 30 May 1947, of Marcel Grenot and in as much as this witness will be called for cross examination I will withhold any remarks in obedience until the time of his appearance.

The next document is NI-7499 which will be omitted.

DR. REINZELER: Dr. Reinzeler for Dr. Wurster.

Your Honors, the Prosecution has now presented as exhibit 1347 the first affidavit of a Frenchman who was working at the Ludwigshafen plant of Farben. This raises a problem of fundamental importance for the defense, and, therefore, I ask Your Honors' permission at this moment to draw the attention of the Tribunal with a few words to a peculiar and particular difficulty with which the Defense is confronted in this case.

According to the viewpoint of the Defense, the picture of the working and living conditions of foreigners at Ludwigshafen as it is outlined in this affidavit, exhibit 1347, is certainly not correct. Otherwise it would not have been possible that Dr. Wurster, my client, the responsible plant manager of Ludwigshafen/Oppau since 1938, could have been expressly confirmed in his position after 1945 for more than two years, could have been confirmed at first by the American Military Government and thereafter by the government of that very state to which this French affiant belongs. Thereby Dr. Wurster was confirmed as plant manager after thorough investigation carried out by the French authorities, investigation into the working and living conditions of foreigners at Ludwigshafen during the War.

Perhaps the cross examination of this affiant will be sufficient to correct the picture given in this affidavit and to present a true picture to the Tribunal. If not, the Defense will be confronted with the necessity to determine other Frenchmen who have been working at Ludwigshafen during the War and to ask them to make affidavits for the Defense or to come to Nurnberg as witnesses themselves. For that purpose Dr. Wurster's Defense Counsel will in the near future take the necessary steps to enable them either to go to France themselves or better still to send one or several other persons to France, since the rapid progress of this trial will probably not allow the Defense Counsel to be absent from Nurnberg for a longer period of time. However, from the experiences gained by other German

Defense Counsel in similar cases, it is to be feared that certain difficulties might arise either in getting the permission to enter Franco or in having an adequate amount of foreign exchange furnished needed for such an undertaking. This, Your Honors, leads to the fundamental problem mentioned at the outset of my statement. In the practice of continental legal procedure, it is the Tribunal's responsibility to procure all possible evidence for finding the truth. Contrary to this continental system, the American system puts the burden of procuring the evidence exclusively on counsel for both sides, Counsel for the Prosecution as well as Counsel for the Defense. But under this system the finding of the complete truth is naturally made sure only if both sides, Counsel for the Defense and Counsel for the Prosecution, are given an equal chance of determining the means of evidence, for instance, names and addresses of potential witnesses abroad.

At the proper time Dr. Wurster's Defense Counsel will, therefore, respectfully ask the Tribunal to assist them in getting the necessary means and governmental permission for travelling abroad. If, however, in spite of this aid such actions will prove impossible for the Defense, we will then bring in a motion that the Tribunal should withdraw the admission of evidence in the nature of this affidavit as procured by the Prosecution, Exhibit 1347, since it was procured in a way that is not equally open to the Defense as it is for the Prosecution. The purpose of my statement is to reserve the right for the Defense to raise at a later date the question of the admissibility of affidavit by foreigners if and when it appears that the Defense, due to the special situation in which Germany finds itself at the present time, cannot collect evidence in foreign countries in the same manner as can the Prosecution.

DR. SEIDL: Dr. Seidl for the defendant Dr. Duerrfeld.

Mr. President, I have the impression that the trial, as far as the Prosecution's case is concerned, has reached a decisive point. The Prosecution is now submitting for the first time an affidavit

which doesn't refer to special statistics, but the object of which is the description of working conditions. I am not interested myself in the contents of this particular affidavit, but I am interested in the fundamental question of principle whether such affidavits should be admitted or not, and I ask you to give me an opportunity now to make a few fundamental remarks in connection with this question so that the Prosecution should not later say that my objections were made too late.

THE PRESIDENT: How long do you need to make this statement that you contemplate, Counsel?

DR. SEIDL: I believe that I can complete my statement in five minutes.

THE PRESIDENT: Very well. We will hear you.

DR. SEIDL: Mr. President, Your Honors, at the beginning of the session this morning I already stated that every modern trial should be guided by the principle of direct and oral testimony. That means that witnesses should be heard before the Tribunal. The Tribunal in the case of a large number of cases has made an exception by permitting these witnesses not to be heard in the direct examination before the Tribunal but by submitting affidavits from the Prosecution. The Tribunal has admitted this because the subject of the affidavits of these witnesses were statistics, that is, partly statistics, in which case it is, of course, understandable that the witness must have certain documents in front of him. The affidavits however, being submitted now, are completely different. These witnesses are to testify about observations which they made in space and time. Their statements are different from those of a witness who reports only about a traffic accident.

In view of the significance of these affidavits, I am of the opinion that these witnesses should be heard before the Tribunal without any affidavit, but they should be subjected to a direct examination of the Prosecution before the Tribunal. If these affidavits were to be admitted in the form in which they are now at

present, this would prejudice the right of the Defense and make it illusory. These affidavits contain not only statements of facts but they also contain statements about events which they know from hearsay. They contain statements about the knowledge of other persons. They make statements about events which allegedly took place in the minds of other persons and also in the minds of the defendant. The affiants draw a lot of conclusions in their affidavits. All these examples should suffice to show you that the statements of these witnesses would not have been entered on the record in the same manner as they are contained in the affidavits if these witnesses had been heard before the Tribunal in a direct examination which is under the control of the Tribunal and under the control of the Defense.

Furthermore, I should like to add that the affidavits are very dangerous, for contrary to European penal law, these trials in Nuremberg are ruled by the party system. That means they are no witnesses of the Tribunal's, but these witnesses here are witnesses of the Prosecution and witnesses of the Defense. That results in a lack of interest of the Prosecution to include any statements in the affidavits which are favorable for the defendants. This was a very difficult situation, and I can refer to an event which took place before the International Military Tribunal. The Defense pointed out a regulation of the German Penal Code in which it is said that according to German law it is the right and duty of the Prosecution to submit material that is favorable to the defendant. In this very spot the American Chief of Counsel, Justice Jackson, refused flatly to consider such a demand, even only to consider it, and he stated flatly that he could not serve two masters.

The following must be added. If a witness is to be cross examined by the Defense, a witness who has sworn out an affidavit, he is in a very difficult psychological position. He has already sworn an oath for the Prosecution. If he is asked by the Defense under a new oath and he is to make a correction of his original statement,

THE PRESIDENT: Very well.

MR. SPEECHER: Your Honor, the reason why Auschwitz appears in two boxes is because the technical supervision of the Auschwitz plant with respect to synthetic oils is to fall underneath Buetofisch, and therefore underneath the Leuna complex; whereas, with respect to synthetic rubber and some of the related products, it was to fall under Ambros, and therefore under the Ludwigshafen complex. We do claim, I might say—and there is no chance for stipulation with Dr. Seidl on this point—that the defendant Buetofisch was the local plant manager and the local Betriebsfuehrer in fact, whether or not any formal, official orders were passed or not at the Auschwitz plant.

THE PRESIDENT: Well, gentlemen; the Tribunal has heard enough of this to know that we are burdening the record and consuming a lot of time that ought not be done. Let us leave the matter this way. If counsel for the Defense has some objection to the affidavit that he thinks he can reconcile with the Prosecution informally, please do that and then call our attention to the correction. If you cannot, all you need to do is to advise us in due time that you want to make your showing as to what the facts may be concerning the exhibit.

Let us not burden this record any more with these discussions because, after all, it is difficult on the floor of the courtroom to settle these matters as expeditiously as they should be settled.

Is that satisfactory, Counsel?

DR. SEIDL: Yes.

THE PRESIDENT: You may continue, Mr. van Street.

MR. VAN STREET: The next document, if Your Honors please, is NI-6847, which is on page 4 of the English and 4 of the German. This is an affidavit of the defendant Christian Schneider regarding his responsibility and authority as Betriebsfuehrer (or Plant Leader) of Leuna. I think it might be helpful to the Tribunal to intersperse this remark at this time with respect to defendant Schneider.

You will have three affidavits of his to consider. One is on his

that constitutes a great danger for him, and it is no question that the truth could be better served if these affidavits were not submitted in the course of this trial at all, but if the witness would be examined directly here before the Tribunal, and he would have to answer only those questions which are submitted to him by the Prosecution, by the Defense and by the Tribunal.

For this reason I made the motion that the Tribunal should not admit any more affidavits which refer to the description of working conditions; that the Tribunal should make a ruling for the Prosecution to procure these witnesses for direct examination under the control of the Tribunal and the Defense.

THE PRESIDENT: Will the Prosecution wish to be heard on this matter?

MR. SPEECHER: Mr. President, it seems to me that almost all of the advantages actually run in the other direction unless the purpose of the Defense be to prolong these hearings. The reason is because by this means the Prosecution is enabled to weed out of the information given by these affiants many very damaging conclusions which I am sure they would like to give if they had the chance to take the witness stand. That is point one.

And point two: we have given in this case more notice to the Defense with respect to the content of information which can be adduced through an affiant who may later become a witness for purposes of cross examination than they are ever privileged to get in any other trial that I have ever heard of, let alone seen; and we submit further that fairness is served to a greater extent because you get a more exact translation, and the Defense gets a more exact translation, because the matter can be translated beforehand, and, therefore, some of the possibilities that exist in these trials because of transcription and translation difficulties are removed.

THE PRESIDENT: Just before we recess for lunch, may I ask you just one question on behalf of the Tribunal, Mr. Prosecutor. Running

ahead in the table of contents of the Book 68 I have noted that there are several or quite a few affidavits that purport to be from other Nationals which I assume you may wish to offer. Now if you do, and if they were admitted without objection or over objection, would it be your purpose and plan to produce those witnesses for cross examination?

MR. SPEECHER: In every possible case where we can and where the defense wants it.

THE PRESIDENT: You would appreciate, I assume, the problem that would be presented even in the absence of an objection of this kind if an affidavit should be admitted, and it would subsequently develop that you could not produce him, or that he was dead or something like that. We would be back into the same problem which we were discussing this morning. You know that.

Very well, the Tribunal will recess until one-thirty.

(The Tribunal recessed until 1330 hours.)

AFTERNOON SESSION

(Tribunal reconvened at 1330 hours, 4 November 1947.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Boettcher.

DR. BOETTCHER: Dr. Boettcher.

Mr. President, may I just explain that regarding the suggestions of the Tribunal that instead of Tuesday, the 11th, we meet on Saturday, the 16th of November we agree with the suggestion and we thank the Court for giving us an opportunity to express our opinion.

THE PRESIDENT: The Prosecution still feels the same way about the matter?

MR. SPRECHER: Yes, Mr. President.

THE PRESIDENT: Then Counsel may understand there will be no session of the Tribunal on next Monday, November 10th, or Tuesday, November 11th, but that the Tribunal will be in session on Saturday, November 16th, and, of course, on Wednesday, Thursday, and Friday preceding.

The Tribunal is now ready to rule on the objection to the introduction of the document NI-7502, which was marked Prosecution's Exhibit 1347. We deem it sufficient to say that under the express provisions of the Charter by virtue of which this Tribunal operates, and under the precedent of the IMT case, and what we understand to be more or less the consistent policy of the Tribunals, and I may say upon the basis of our own precedents that have been followed since the beginning of this trial, the Tribunal cannot sustain the objection to the introduction of this affidavit. Counsel for the Defense in making his objection stated that there were other problems that would incidentally arise. Those matters are not presently before the Tribunal. Perhaps, contrary to the fears of the Counsel for the defendant, they may not arise. If they do arise, the Tribunal will meet and pass upon them at the proper time.

The objection to the introduction of the affidavit, Prosecution Exhibit 1347, is overruled, and may be read now, as was observed from the bench this morning, we have looked ahead in this book to see that the

Prosecution has other affidavits of the same type and character, so far as the residence or nationality of the affiants are concerned. We think our ruling is sufficiently clear that whatever rights the Defense have have been served by the objections now overruled, and that it would serve no good purpose to formally renew those objections, and we will understand if any occasion does arise to resurvey this subject in a similar respect, that Counsel for the Defense would sustain a consistent position and make objections to those also. We will keep that in mind as those other documents may be offered. If it becomes pertinent to go into the matter from any single, we will not consider that Counsel for the Defense has waived anything by failure to make a separate objection to each document.

Counsel for the Prosecution may proceed.

MR. VAN STRKET: May it please your Honors, we had come to Document NI-7499, which will be omitted.

DR. SEIDL: Dr. Seidl for the defendant Walter Duerrfeld.

Mr. President, I request permission to call the attention of the Tribunal to a fact which seems to me important in connection with the decision announced today by the Tribunal - that is, in my opinion the Tribunal should have to consider.

THE PRESIDENT: Very well. State it briefly.

DR. SEIDL: This morning the Tribunal announced that for the examination of witnesses a commissioner was to be appointed who would have the rights of a judge. As a future commissioner Mr. John H. Fried was named. I should like to call the attention of the Tribunal to the fact that Mr. John H. E. Fried has already worked on behalf of the Prosecution in this case. I should like to remark, first of all, to avoid any misunderstanding that my objection is not to the person of Mr. John H. E. Fried as such, but only against the fact that he has already been active as an official of the Prosecution in this case.

Last Friday the Prosecution offered a document numbered NI-4434-a. This is an affidavit of Mr. John H. E. Fried, dated 29 October 1947. In volume 75, which has already been supplied to the Defense, there is an

affidavit from a certain Kain Feinberg. This is Document NI-4822. This document was also taken down by Mr. John H. E. Fried, and the signature was certified by him. I am of the opinion that under the circumstances Mr. Fried's acting as judge or commissioner in this case is impossible on the basis of the law. In this connection...

THE PRESIDENT: It is not necessary to argue that. The Tribunal had no notice or information or knowledge that Mr. Fried had any connection or association directly or remotely with this prosecution or this case. We were moved to and did name him in the order because we did have knowledge of the fact that he had had some experience in matters of this kind, which we thought would be valuable and helpful to the Defense and Prosecution alike.

The Tribunal would like to correct one assumption expressed by Counsel for the Defense, and that is that the appointment of a commissioner does not constitute the commissioner a judge. This Tribunal and and this Tribunal alone will resolve the judicial questions. He would merely preside at the taking of testimony. However, the Tribunal will give careful consideration to the objection urged by Counsel for the Defense. We think that the commissioner should be a neutral person so far as it is possible for us to guarantee that right. We will make some inquiry on our own initiative with respect to the matter suggested by Counsel, and if occasion arises we can meet that objection by naming someone else as a commissioner.

In the meantime you may consult among yourselves. If you should agreed on him or on anyone else, the Tribunal would very happily give great weight to the agreement of Counsel as to who might act as commissioner. If you do not reach any such agreement either with respect to Dr. Fried or some other person that you regard as neutral, the Tribunal would undertake to give you a neutral commissioner who can and will follow what we prescribe to be his oath to honesty, faithfully, and impartially discharge his duties.

DR. SEIDL: Mr. President; I merely wanted to remark that I have made

this objection at this time in order to prevent any unnecessary organizational changes.

THE PRESIDENT: Very well. Consult among yourselves and with the Prosecution, and if you have any suggestions to make, let us have the benefit of it. It was not our intention to immediately today assign any duties to the commissioner or transfer the taking of any evidence to him, but we do expect to do it shortly, and we will give due consideration to this matter before any assignment is made. The Prosecution may continue.

MR. VAN STREET: The next document is NI-9372, which may be marked as Exhibit 1348. This is an affidavit of 6 August 1947 of Rudolf Marock, (M-a-r-o-c-k)

I believe this witness will be called for purposes of cross-examination, and I will withhold any remarks until that time.

The next document is NI-7498, which will be omitted.

The next document is NI-11410, which may be marked as Prosecution Exhibit 1349. This is an affidavit of 22 July 1947, of William Allen, an English prisoner of war. This is found on page 76 of the English and 100 of the German. This affiant likewise will be called for purposes of cross-examination, and we will withhold any comment until that time.

The next document is NI-7107, which may be marked as Exhibit 1350. This is found on page 78 of the English and 103 of the German. There is a correction, Your Honor, to be made in the index; the last sentence should be corrected: "Also present at this meeting were the plant leaders, with the exception of Buerger, von Schnitzler, Brueggemann and Wurster." This document is the minutes of an Enterprise Advisory Council meeting which was held on 11 March 1941, at Zscopau, and at this meeting defendant Schneider reported that 18,000 drafted I.G. employees had been replaced by women and 12,366 foreigners, of which 2,162 were prisoners of war. The document is signed by Schneider.

The next document is NI-7506, which will be omitted.

We now come to NI-7507, which may be marked as Exhibit 1351. This is an affidavit of 25 May 1947 of Jockey Frossard. This affiant will likewise be called for cross-examination purposes. We will give a summary of the affidavit at that time.

The next document is NI-7508, which may be marked as Exhibit 1352. This is also an affidavit of Jockey Frossard, dated 31 May 1947, found at page 67 of the English

and 113 of the German, and any comment on this document will be passed at this time.

The next document is NI-11071, which will be omitted.

The next document which I ask be marked as Exhibit 1353 is NI-2882. This is a chart marked "secret" showing the number of Anorgana personnel for August 1944. Reference is made to page 96 of the English and 131-C of the German, wherein total figures are given with respect to different classifications of workers. At the bottom of the page it will be noted that there were 366 workers from the East; other foreigners, 503; 91 French prisoners of war; 139 Italian military internees, and 110 concentration camp inmates.

The next document is NI-4160, which may be marked as Exhibit 1354. This is a memo dated 29 November 1943, found at page 98 of the English and 122 of the German. It concerns the medical care of concentration camp inmates following a conference or meeting between Dr. Hartung, who was the plant doctor of the Gendorf-Anorgana plant of I.G. Farben, and Dr. Wolter, who was the chief physician of the concentration camp Dachau. It is noted that Hartung is to be in charge of the concentration sub-camp at Gendorf and that Dr. Wolter is to be informed about operations such as sterilization and hernia prior to their being performed.

Paragraph 5 of the document, on page 98 of the English and 122 of the German, notes that acute TB cases, or inmates who for their ailments are rather an encumbrance than useful workers are to be sent back after Walter has been informed.

The next document is NI-10695, which may be marked as Exhibit 1355. This is found at page 99 of the English and 123 of the German. This is simply a notice that Dr.

Hartung, the plant physician of Anorgana, will take over, with Anorgana's agreement, the care of Eastern and Polish mothers and the newly-born children, and that he will use the Russian doctor assigned, as an assistant.

The next document is NI-2744, which I ask be marked as Exhibit 1355. This is found beginning with 101 of the English and 126 of the German. This particular document consists of a group of memoes, and the first one, which is at page 101 of the English and 126 of the German, refers to a conference of 4 November 1943, at Dachau, at which it was agreed that Anorgana would have to pay for work of inmates on Sundays.

The next letter in this collection constitutes objections — that is at page 103 of the English and 130 of the German — to Dachau via telephone, 22 April 1944, on the charging for Sunday work; and the third memo, which is at 104 of the English and 131 of the German, there is made a further objection to Dachau via telephone, on 27 May 1944 on the charging for Sunday hours. Dachau states it will take up the matter, reporting all Sundays as rest days, even though Anorgana works the inmates. This document's purpose is to show that financial advantage was aggressively pursued in the exploitation of the concentration camp inmates.

May it please Your Honors, I would like to refer back for just a moment to Exhibit 1355, which is further identified as NI-10595 — on page 99 of the English and 123 of the German — about the middle of the first paragraph; and I quote: "With the establishment of this home children of Poles or Eastern workers may in future not be reared in the works, or in the agricultural or industrial place of work or thus in a German household. Under no

circumstances can it be tolerated that with the large number of births to be expected in the above-named category these children of a foreign race grow up together with our German children."

Now, we come to Document NI-4051, which may be marked Exhibit 1357. This begins on page 107 in the English and 137 of the German. The document consists first of a letter dated 11 December 1944, stamped "secret" from Wittwer. Wittwer, for Your Honors' information, was the plant manager of the Anorgana-Gendorf plant. This letter is to Ambros asking Ambros' intercession to Pohl for more guards for concentration camp inmates at Gendorf. That letter is on page 109 in the English and 139 of the German.

Reference is now made to page 110 of the English and 140 of the German, and therein is contained a suggested letter which has been submitted by Wittwer to Ambros, dated 12 December 1944; and this suggested letter is supposed to go to Pohl, from Ambros, with reference to the subject matter of additional guards for the concentration camp inmates at Gendorf.

Now, on page 107 of the English and 137 of the German, there is a letter of acknowledgement dated 22 December 1944 from Ambros to Wittwer. The index, if Your Honors please, should be corrected to read "Wittwer" instead of "Pohl," in the item 3.

On page 108 in the English and 138 of the German, there is a letter dated 27 December 1944, from the camp commander of Dachau to Wittwer advising that more than 21 guards for the 220 inmates could not be granted.

The next document, if Your Honors please, is NI-9821, which will be omitted.

functions and duties as Hauptbetriebsführer (that is, the chief plant leader, or you might say the Chief Social Welfare leader of the entire I.G.) and then you have an affidavit which has been introduced referring to his responsibilities and activities as leader of the Unternehmensbeirat (The Enterprise Advisory Council). And then you have this particular one, Your Honors, which has to do with his specific duties and functions as the plant leader of Leuna.

JUDGE MORRIS: Pardon me; I did not get the exhibit number. Will you repeat the exhibit number, please?

MR. VAN STREET: The exhibit number of this particular VI-6847?

JUDGE MORRIS: That is right.

MR. VAN STREET: I had not given it yet, Your Honor; that is 1333. Thank you very much.

I respectfully call Your Honors' attention to page 5, paragraph 6, which appears on page 6 of the German, wherein the affiant states: "When a foreign worker left the camp without permission, the factory guard searched for him. If found, he was brought back and punished by the Personnel Department. If it happened again, or in cases of laziness or the use of derogatory political remarks, the foreign worker had to be and was reported by him to the Gestapo, resulting in many cases in the internment of the man in a concentration camp. Approximately twenty to thirty people were reported each month. The reports had to be signed by two authorized persons. I remember having signed such letters frequently."

Paragraph 8 speaks about the setting up of a labor education camp at Leuna by the SS and that he furnished the land upon which this camp was erected without asking the approval of the Vorstand. However, he goes on to say that "later on the"—it is called Indoctrination Camps here, but I am informed that a better translation is Labor Education Camp—"were of course generally discussed by the Technical Committee, and Privy Councilor Schnitz, too, knew about their existence."

In Paragraph 10, on page 6, the affiant says "I know of a case in

We now come to documents on Hoechst. The first document is NI-6415. This is found at page 113 of the English and 144 of the German. The exhibit number is 1358.

DR. GATHER (Counsel for defendant Ambros): Mr. President, I should like to call the attention of the Tribunal to Exhibit 1355. I have compared the original once more with the copy in the document book, and I note that the listing in the index as a letter or agreement is misleading, and that the subsequent interpretation of the Prosecutor is mistaken.

This is merely some kind file note, of the NSDAP Kreisleitung, of the district office of the Party. The content, as will be shown later, was never carried out by the Anorgana Gendorf.

THE PRESIDENT: We will make a note of the fact that the index is questioned by counsel for the defendant. As we said before, we do not regard the index as evidence anyway, but where it is calculated to mislead the Tribunal we would be happy to not it and we will consider the document itself, rather than the index. Thank you, Counsel.

DR. GATHER: Thank you very much.

MR. VAN STREET: May it please your Honors, in connection with the objection just made to NI-10695, Exhibit 1355, reference is made to page 99 of the English and 123 of the German, to the third paragraph, in which it simply says "In agreement with the Anorgana plant, the physician of the plant, Dr. Hartung, is to have charge of the foreign lying-in cases." And it was on that that the index was predicated.

THE PRESIDENT: Very well.

MR. VAN STREET: We have now marked in evidence NI-6415, as Exhibit 1358. This is found on page 113 of the English and 144 of the German. Reference is made especially to page 115 of the English, paragraph 3 which appears on page 145 of the German. The affiant states: "When the question of employment of foreign labor came up for the first time during a directors' conference, at Hoechst, both engineer Friedrich Jaehene and myself, as well as the other gentlemen of the Directorate

took an absolutely positive stand to the proposition. Since German labor was not available in sufficient numbers, we welcomed the employment of foreign labor. In Germany, I.G. Farbenindustrie did not oppose the employment of foreign labor. When the question of hiring foreign labor became acute at Hoechst, I, of course, had to get in principle the approval of the head of my Sparte, Dr. Fritz Ter Meer. In later cases, as a member of the Vorstand, I could make a decision on my own authority, except in such cases where for some reason or other I had some doubts as to the employment of foreign labor. In such cases, I turned to Dr. Christian Schneider to bring about a decision."

Then, on page 116 of the English and 1146 of the German, the affiant states: "In the course of time I came to know that the major part of the Russian workers were not recruited on a voluntary basis, but were simply seized on the basis of a roster, and deported for work to Germany. I furthermore knew that to those Russian workers who had reported voluntarily great hopes had been held out with respect to their working and living conditions, which had not been fulfilled in Germany, and that these so-called Eastern workers did, of course, not have the possibility to return to their homeland. Of these facts I learned in the course of my visits to the camps for the Eastern workers of my plant. I remember, for instance, that I heard such things from a former Russian major who had been brought to Germany, together with a large part of the able-bodied members of his community."

I am informed that there is an error in the translation, and that that should be "Russian mayor" instead of "major".

The next paragraph: "I also know that so-called Western workers were working in Germany under compulsion since, at a certain date during the war, it had been decreed that all contracts with French workers which had expired had to be prolonged indefinitely without a regard for the wishes of the respective workers. In a similar way, Western workers who were not bound by contract were of course likewise compelled to stay in Germany. I personally know of no exception made in the execution of this

decreed. The other gentlemen of the Vorstand of the I.G. Farbenindustrie were, I suppose, just as informed of the facts mentioned in paragraphs 6 and 7 as I was."

And on page 117, which is likewise 147 of the German. "In the I.G. Farbenwerke Hoechst an estimated maximum number of 200 foreign workers between the ages of 14 and 18 were employed." Then, about midway of the next paragraph, which is 10: "In contrast to the Western workers, the Eastern workers were confined in fenced-in camps, were guarded by the I.G. plant guards, armed with pistols, and were not allowed to leave the camp, unless each individual leaving the place had obtained a pass from the camp management."

On page 118, paragraph 12, which is 149 of the German, he speaks about recruiting activities, and says specifically: "As the labor situation in Germany became more and more acute, and as it became more and more difficult to get workers, most of the I.G. plants decided to send their own representatives to the occupied territories to recruit workers there. For this purpose, the Hoechst plant also sent Dr. Wilhelm Stollmann to France and Dr. Johann Simon to France and to Italy as well. It was my responsibility, as plant manager and member of the Vorstand to approve these trips."

Then the first sentence in the next paragraph goes to the purpose of recruiting labor for the I.G., and it is stated that it "had to do with the checking up of the factories of the Italian chemical and textile industries to ascertain how many workers could be drafted from these factories utilized for the German chemical industry. At the same time, when Dr. Simon was in Italy, gentlemen of other I.G. plants were likewise there to make the same investigations."

Now coming down to paragraph 15 which appears on page 119 of the English and 150 of the German, affiant Lautenschlaeger states:

"Approximately 40 per cent of the production of the I. G. Farbenwerke Hoeschst during the war was an outright armament production, and consisted of the manufacture of preliminary products for the making of explosives, smoke bombs, dyestuffs for uniforms and for camouflage. For the manufacture of these armament products foreign workers were employed. Prisoners of war were likewise employed in armament production in other plants of the "Mittelrhein" works Combine of the I.G. as for instance, to the Griesheim Autogenous Plant."

Then the affiant states that:

"As manager of the Works Combine I was responsible for this assignment, although I knew that the employment of prisoners of war in armament industry was in violation of the International Regulations Concerning Land Warfare laid down in the Hague and Geneva Conventions".

The next document is NI-6641 and may be marked as 1359. This is at page 122 of the English, and 152 of the German. This is an affidavit of defendant Lautenschlaeger, dated 17 April, 1947, and it regards the activities of defendant Friedrich Jaehne, and that was in I. G. Farben. It is said among other things:

"All larger requests in the construction and engineering technical field like construction of barracks and camps to accommodate foreign labor, convicts and concentration camp inmates were first sent to the Technical Commission. Jaehne was chairman of the Teko. He participated in all meetings of the management and had influence on solution of foreign labor questions of plant community."

On page 123 of the English, and 154 of the German, reference is made to paragraph 8 which reads:

"If meetings of the separate departments had taken place which neither Jaehne nor I had attended, then the most important minutes of the meetings were forwarded to us."

The next document is NI-2873, which will be omitted; as will likewise, Document NI 4189.

We now come to NI 2974, which may be marked Exhibit No. 1360. This is an affidavit dated 17 January, 1947 of Dr. Johann Simon, found on page 130 of the English, and 163 of the German. Simon was an employee of Haechst from 1938 to 1945. This affiant will be called for cross-examination and we will withhold comment until that time.

The next document is NI 2993, which will be omitted.

NI 2829, I ask be marked as Exhibit 1361. This is found at page 134 of the English, and 168 of the German. This document represents the minutes of 14 July 1941 of the Technical Department Leaders of Hoechst.

Among other things it reports difficulties in regard to labor, the possibility that 150 dutchmen will be obtained. The minutes show that Lautenschlaeger and Jaehne were present, and they they were signed by Lautenschlaeger.

Reference is made to page 138 of the English, and 174 of the German, wherein it is stated that "foreign female workers engaged in specific work for women must be transferred, as particularly Eastern female workers are accustomed to men's work".

The next document is NI 4680, which may be marked as Exhibit 1362. This is on p. 141 of the English and 176 of the German, and consisted simply of a teletype message dated 5 February 1942 from Lautenschlaeger to Lindemann of G. B. Chemie requesting 1000 more foreigners for production of war materials.

The next number is NI 6151 which may be marked as Exhibit 1363. This is found at 142 of the English, and 177 of the German. This is a protocole dated 24 January, 1944, a meeting of the Technical Management Main Valley. It is reported the beginning 1 February 1944, firms will again be permitted to recruit labor in Belgium, and it is also discussed that if foreigners do not return from furloughs, I.G.

will inform the SS to take action. Lautenschlaeger was present at this meeting, and signed the minutes.

I should also like to point out that Dr. Struss was present at this meeting, and that a copy of the minutes went to Jaehne.

The next document is NI 6152, which will be omitted. We now come to NI 1654, which is at page 148 of the English, and 185 of the German. This is also a protocol of meeting of the Technical Management, of the Main Valley, on 22 May 1944.

On page 149 of the English, and 187 of the German, it is reported that very few laborers are coming from France and Hoechst will send a liaison officer to expedite procurement of workers." At page 149 of the English and 188 of the German it is reported that: According to a circular letter from the Gau Economy Chamber, foreign workers, including Ukrainians, may now be used as anti-aircraft gunners. Lautenschlaeger was present at this meeting, and signed the minutes.

If Your Honors please, NI-6154 should be marked as Exhibit 1364.

The next document, NI-6155, which may be marked as Exhibit 1365, page 151 of the English, and 190 of the German, is a protocol, 10 July 1944, of the meeting of the Technical Management Main Valley. It is reported that the Gestapo is taking energetic measures against Eastern workers who steal, and that these workers are sent to a work education camp, and since I. G. misses that labor it will try to get a branch of the camp transferred to Hoechst. Lautenschlaeger and Jaehne were present at the meeting, and the minutes were signed by Lautenschlaeger.

Document NI-6158 will be skipped.

We now come to NI-4685 which will be marked as Exhibit 1366. This appears on page 158 of the English and 200 of the German. This is a somewhat significant document in that it gives the definition of the term, "Osterbeiter". In the first paragraph of the document under the term "Osterbeiter", that is, "Eastern worker", are included "workers

belonging to non-German peoples from the Reich Commissariat Ukraine and the general area of White Ruthenia and their bordering territories and the lands east of Latvia and Estonia, who, after occupation by the German Wehrmacht, will be deported to the Reich for labor."

Then paragraph 3, under II of the document, which is at 201 of the German, it is stated that:

"So far as Eastern workers under 14 years of age are concerned, they will receive, according to performance 40-90 per cent of the tariff wage for 14-year olds".

The next document NI-7511, will be omitted.

Document No. NI-11613 may be marked as Exhibit 1367. This is an affidavit of 26 September 1947, of Johannes DeBruyn, a Belgian. A summary will be made of this document upon the witnesses' presentation for cross-examination.

The next document is NI-2995, which may be marked as Exhibit 1368. This is an affidavit of 9 December 1946 of Heinrich Besper, who will likewise be presented for cross-examination.

NI 2975 may be marked as Exhibit 1369. This document is likewise an affidavit of Heinrich Vesper, dated 15 January, 1947.

The next document NI-2974 will be omitted, and we thus conclude Document Book No. 69.

With Your Honors: permission, I now turn to Document Book No. 70. In the first part of this document book there is contained documents pertaining to the Leverkusen plant.

Document NI 6125, which may be marked as Exhibit 1370, is the minutes on conferences of the Technical Department leader at Leverkusen on the certain dates as indicated. For example, on 8 October, 1941, which is at page 3 of the English and 6 of the German, it is reported that it is the intention to employ foreign workers up to an average of 30 percent of the total workers.

22 January, 1942, which is at page 5 of the English, and 9 of the German Kuehne reports the urgent need to increase the foreign workers, and retain those already in the plant.

30 September, 1942, which appears on page 8 of the English and 12 of the German, it is indicated that the shortage of workers in Leverkusen has increased considerably because of the lack of supply of foreign workers, consequently the production of several important products had to be reduced. The management has prepared a detailed report about the situation in Leverkusen, which was submitted to the different authorities concerned, so that they may realize the consequences resulting from further withdrawal of laborers or from non-delivery of foreigners".

Then Warncke in these same minutes, indicates that a certain relief would occur in the labor situation before long through the assignment of labor service girls, I might mention, your Honor that these German girls apparently were volunteers, and the labor service girls and Female Croatsians who then came within the forced labor category.

I respectfully ask that the index in respect to 30 September 1942 be stricken.

We now come to 19 May 1943, page 15 of the English, and 26 of the German. It is reported here that the female Eastern workers should

be withdrawn from easy jobs to replace male handicraft. The record shows that Kuehne was present at this meeting.

I might add Your Honors, that the minutes on all of the dates heretofore mentioned under NI-6125, that said meetings were attended by Kuehne with the exception of the one dated 30 September, 1942.

We now come to Document No NI-5765, which may be marked as 1371. This is the minutes on a directorial conference 10 March, 1941 at Leverkusen, attended by Kuehne and Hoerlein. Kuehne referring to a discussion with Ter Meer talks about the difficulties in labor employment.

Then on 11 November 1941, at a meeting of the directors in Leverkusen at which Kuehne, Hoerlein and Bruggemann were present, the assignment of prisoners of war was discussed. This appears on page 21 of the English, and 36 of the German.

Your Honors will notice a little hesitation at this moment. What we are trying to work out is a stipulation with defense counsel as to the appearance, so far as the record is concerned, of Dr. von Schnitzler's initials on some of these minutes. Due to an error in translation, the initials were not shown in either the German or the English. However, the initials do appear on the original exhibits. Have you worked that out, doctor?

DR. VON KELLER: (counsel for the defendant, von Schnitzler)
Mr. President, I should like to point out on this occasion that the initials of Mr. von Schnitzler, so far as they are indicated here in the index, were not placed on the original document, but on mimeographed copies of the minutes. That is to say, on only one copy each of such notes, and they are not a part of the original.

This remark refers to Exhibit 1370 as well as 1371. The initials are only on the copy which Mr. von Schnitzler received in each case.

MR. VAN STREET: Your Honors, the Prosecution is in a position to stipulate as to what defense counsel just said.

THE PRESIDENT: Very well. The record will so show.

MR. VAN STREET: Under Exhibit 1371, I would like to next to call Your Honor's attention to a report of a directors' meeting at Leverkusen on 13 January 1942, which appears at page 21 of the English, and 38 of the German. Kuehne was present at this meeting in which TEA credits were discussed, and it is suggested that the subsistence deductions in the payroll of Polish juvenile laborers be examined by the Social Department.

This report shows the initials of von Schnitzler.

Then again on the 28th of April 1942 in this document, there appears notes on a directors' meetings in Leverkusen with Kuehne, Hoerlein and Mann present.

It is on page 22 of the English, and 40 of the German. At this meeting Mann is reported as discussing the very far-reaching responsibility of the Work Manager in the sphere of the raw material and labor market policy. Kuehne discusses a circular of Krauch concerning treatment of foreign laborers. In this connection there is a report concerning the employment of foreign labor in the plant. This note shows the initials of von Schnitzler.

Then on 2 February, 1943, at a directorial conference at Leverkusen, with Kuehne and Hoerlein present, -- this appears at page 23 of the English, and 44 of the German, it is noted that it is expected that a sufficient number of foreigners be made available to to replace the personnel drafted into the army. The hut-camp should be finished as quickly as possible for the foreigners.

And the note of the minutes shows the initials of von Schnitzler.

Then on 24 March, 1943 at a later directors' meeting at Leverkusen it is reported that also in Leverkusen aliens are used for urgent Sunday jobs. Kuehne and Hoerlein were present, and the transcription shows the initials of von Schnitzler.

which a transport of approximately 200 Eastern workers was collected by the factory guard in Leuna, although we knew that we had no possibility of accommodating these people. Lakeshift accommodations were provided for this transport for approximately one week.

In paragraph 13 he speaks about the sending of Leuna people to meet the transports to pick up the allocation of workers which were scheduled for Leuna.

The next —

THE PRESIDENT: Counsel—

MR. VAN STREET: Yes, Your Honor.

THE PRESIDENT: This would be an appropriate time for us to rise for our customary recess.

(A recess was taken until 1330 hours.)

That appears at page 23 of the English, and 46 of the German.

Then again on 4 May, 1943, at a directors' meeting at Leverkusen, which was attended by Kuehne, Hoerlein, Bruggemann and Mann, among others, reference is made to the necessity of the right employment of east labor.

The transcription bears the initials of von Schnitzler.

14 September, 1943, at a directors' conference at Leverkusen, which appears on page 25 of the English, and 51 of the German, Hoerlein and Mann are shown to be present. Labor difficulties are discussed. The only possibility to get workers was the red-slip. Inasmuch as a red-slip action was without success, appears the attempt to hire labor in two certain French provinces. Your Honors, the Prosecution understands that the red-slip action simply refers to a priority, and we are subject to correction if the defense has any comment on that.

On 6 March 1944 in a Director's meeting and with Kuehne present, it is indicated that Warnecke will go to Italy soon to procure people for the economic group. It is noted that the present camps for foreign workers are fully equipped and that it is necessary to complete the construction of additional barracks soon. Another meeting which was held on 27 March 1944 and which appears at page 26 and 57 of the German shows that Kuehne was present and that Leverkusen will receive Russian families and will give its Italian military internees to Friedorf. The initials of von Schnitzler appear on this transcript. Now, as to Item 11 under this particular exhibit, if your Honors please, you are asked to refer to page 26 for the purpose of making a correction in the date, 31 March 1944 is in error and just above the word "confidential" on page 26 which is at page 60 of the German, there should be the date "10 July 1944." At this particular conference at which Kuehne was present it is reported that female foreign workers who spend the night out of camp will be locked up by the police from Saturday noon to Monday morning to avoid a work shortage. Interruption of pregnancies of female aliens is to be carried out in a barrack erected by the Kreia. Von Schnitzler's initials appear on this document.

Then on 3 October 1944 a report of a director's meeting, page 27 of the English and 66 of the German. It's noted that Leverkusen is supposed to furnish 76 masons for concrete work in the Western Wall. A Speer ordinance is referred to, that specialists must not be withdrawn from the armament industry so inexperienced laborers only will be given up, namely, female Eastern workers.

I refer next for comment to Item 15 of the index, transcript, dated 13 November 1944, page 28 of the English and 75 of the German. It's noted that the Leverkusen confirms that several barracks are vacant because aliens had left. These barracks are to be deloused and to be put in order so that they may be used by German families in cases of emergency. The record is initialled by von Schnitzler.

The next document is NI-7066 which may be marked as Exhibit 1372. This is found at page 31 of the English and 87 of the German. This is a circular of 29 December 1941 of the Social Department of Leverkusen. German workers must always remember Poles are citizens of an enemy state. No social contact is permitted and Poles at all times must wear on their work clothes a purple "P" on a yellow background.

NI-7064 is the next document which may be marked as Exhibit 1373. This is on page 41 of the English and 98 of the German, a circular, 11 July 1942 of the Social Department Leverkusen. Here again the definition of the word "Ostarbeiter" appears. It is also mentioned that Eastern workers will be even escorted to and from meals and the German work regulations will not apply to Eastern workers, no additional pay is given for overtime, Sunday and holiday work of Easterners and no allowances for separations from families, billeting, and food will be paid to Easterners.

The next document is NI-8995 which may be marked as Exhibit 1374. This appears at page 46 of the English and 104 of the German.

DR. ASCHENAUER: Dr. Aschenauer for Gattineau. I should merely like to call the attention of the Tribunal to a translation mistake for the following reasons: this mistake has occurred repeatedly and has not yet been corrected.

THE PRESIDENT: Counsel, pardon me. To what exhibit are you directing your remarks?

DR. ASCHENAUER: It's Exhibit NI-8995.

THE PRESIDENT: That would be Exhibit 1374?

DR. ASCHENAUER: Yes.

THE PRESIDENT: Go ahead.

DR. ASCHENAUER: "Volkswirtschaftliche Abteilung" has been translated /"Political Economic Department". That's incorrect.

MR. SPEICHER: It's a translation error. VWI should be "Economic Research Department."

THE PRESIDENT: We have corrected our index.

MR. VAN STREEST: Referring to Exhibit 1374, this is a letter from I.G. Farben's VOWI to Warnecke of Leverkusen and the latter draws attention to the opinions of high army officials regarding treatment of Eastern workers in Germany and special reference may be made to page 53 of the English and 111 of the German and reading from the top of the page 53 it states:

"I was expressly asked by responsible quarters to point to the fact within the firm as far as it is possible to me that many things happening in the homeland in the treatment of the Eastern workers cost German blood out there. After all is seen and heard at the most different occasions, and this not last from the functionaries of the SS which are locally in charge and in whose hands the security service is, the most correct conception seems to me that the Russian, at least the rural population (for the industrial workers of the big plants were evacuated together with the plants), if they are not longer under the influence of the Jews and Commissars, are to be considered great children."

This is of particular significance and should be noted carefully in as much as it may be considered an intra-organizational memorandum between a representative of the VOWI and an important official of one of Farben's plants following the writer's or reporter's actual visit to the front lines.

The next document is NI-7113 which may be marked as Exhibit 1375. This appears at page 61 of the English and 118 of the German. This is a letter of 9 February 1943 signed by Hackstein to the Department Chiefs and Plant Managers and Office Chiefs regarding punishment of prisoners-of-war. "Gross infractions of discipline are to be reported to Mr. Hackstein for special penalties."

The next document is NI-7110 which may be marked as Exhibit 1376. This is at page 63 of the English and 120 of the German. I call your Honor's attention that this report is dated 9 June 1943. The date is mis-typed in the index. I think it shows 1947. It should be 1943.

Referring to page 63 it will be noted that the conversations and meetings of the Food Supply Committee of the Plenipotentiary General for Chemnitz was held on 4 March 1943 at Ludwigshafen. The Chairman was Lieut. Col. Kirschner who, incidentally, your Honor, is the same Kirschner who wrote to Gen. Thomas on Krauch's behalf in respect to the suggested plan for the employment of Russian prisoners-of-war in the armament industry. Then going to page 64 of the English which is at page 122 I believe of the German, at the top of the page it's reported that Bruex, and if the Tribunal please, I should also like to mention that the Bruex was also mentioned in that particular letter on Krauch's behalf by Kirschner to Gen. Thomas. Bruex reported that after negotiations with the base camp 4-a Wiestritz near Teplice-Schebnau it's now permitted also to beat French prisoners-of-war for lack of discipline if need be. Negotiations with the competent base camps of the individual plants on this subject were recommended. The Secret State Police in conjunction with the Reich Labor Trustees have authorized the establishment of an indoctrination camp for foreign workers for Ludwigshafen. Again, your Honor, we have it translated "indoctrination camp" and it should be "labor education camp."

Then down toward the middle of the page 64 of the English book. It's indicated that "Ludwigshafen could record a marked success with its special care extended to Eastern workers." Another sentence: "Particularly industrious girls were billeted in special rooms with bed linen and received crepe paper, which Russian women are very fond of, as a reward for special work or particularly good conduct."

The next to the last paragraph: "Ludwigshafen distributes bread only after it is three days old in order to avoid stomach troubles." This is signed by Dr. Backstein and for the kind attention of information of Dr. Knoke. It might be a convenient time to recess.

THE PRESIDENT: The Tribunal will rise for a recess at this time.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

MR. VAN STREET: May it please the Court, we begin with Document No. NI-7112 which may be marked as Exhibit No. 1377. This is at page 66 of the English and 125 of the German. This consists first of a letter dated 24 May, 1943 from Commanding Officer, 3rd Co. Landeschuetzen Battalion complaining that German soldiers received same food as the prisoners of war, "and second a copy of a letter, "1 June 1943, from Leverkusen that food of soldier guards is different from that of prisoners of war as a matter of course, and it is an exceptional case that German soldiers receive same food as P. W's."

The next document is NI-8965 which may be marked as Exhibit 1378, page 71 of the English and 129 of the German. This is a report, "27 July 1943, on conference of Leverkusen officials with the deputy for construction matters regarding labor allocation for construction work", and it states that "Concerning allocation of workers we, that is, Leverkusen, received no assistance from any source, not even from G. B. Chemie, despite our many applications." It goes on to say at the bottom of page 71 which is 130 of the German, "If we had not helped ourselves by requisitioning foreign workers, we would have found ourselves in the greatest difficulties in the most urgent construction projects and the most important plants."

The next document is NI-8999 which may be marked as Exhibit 1379. This consists of a letter, 20 September 1943, from the Belgian and Northern French deputy of G. B. Chemie to Leverkusen regarding "complaints by Swannet and Francois on treatment of workers procured through this firm." It is reported that 25% of the total labor force in Leverkusen

was reported sick of typhus. That letter appears, Your Honors, on page 77 of the English and 132 of the German.

DR. GIERLICH: Gierlich for Counsel Dr. Lummert, Defense Counsel for the defendant Kuehne.

Your Honors, may I ask to be permitted to make a correction in the index in regard to this point. Since this letter, too, does not speak of the fact that 25% of the total labor force in Leverkusen was reported sick, but 25% of the foreign workers were sick, and that can be seen from the second letter that there were only eleven cases of sickness altogether. Therefore, the formulation in this index is misleading.

THE PRESIDENT: Can the Prosecution give us its views about this suggestion of error?

MR. VAN STREET: Your Honors, if you will refer to page 77 of the English and 132 of the German which is embodied in the 20 September 1943 letter, it is stated that "One workman of the Belgian firm has already died, another one fell ill with typhoid. Of the whole body of foreign workmen about 25% are said to have contracted typhoid." I certainly think that that should be "typhoid" instead of "typhus" because if I am correct in my understanding, there is a difference.

THE PRESIDENT: And, perhaps it should be "foreign workmen" instead of "total labor force".

MR. VAN STREET: Yes, we can agree with that correction, Your Honor.

THE PRESIDENT: Very well.

MR. VAN STREET: Then number 2 there is a letter, 29 September 1943, from Leverkusen replying to the complaint, and in this letter "the epidemics are attributed to lack of cleanliness among Western workers and the clustering of sov-

eral thousands of foreigners in the Eigenheim camp."

The next document is NI-6970 and may be marked as Exhibit 1330. This is found at page 80 of the English and 140 of the German. This is a circular dated 7 October 1943 of the Social Department, Leverkusen, and states that "Italian military internees will now work for Leverkusen and they will be treated like the French P. W.'s."

Now come to Document NI-7115 which may be marked as 1331. This is found at 81 of the English and 142 of the German. It is a letter dated 17 November 1943 from Dr. Feder of Leverkusen to Dr. Haberland. Feder complains that the increase of the foreign labor force by 700 Italian military internees and 300 Russian families leaves hospital facilities completely inadequate. Feder declines responsibility for health conditions in the camp unless the minimum program which he requests is executed.

The next document is NI-8996 which may be marked as Exhibit 1332. This is on page 85 of the English and 146 of the German. It consists first of a letter dated 16 November 1943 from Labor Office in Opladen regarding voluntary mutilation of foreign workers. Matter discussed at the Leverkusen Managers Conference, 20 October 1943. It is noted that "In case of voluntary mutilation, medical department is to be informed about character of man," that is, as to whether he is an orderly man or a slacker, because such hints are valuable for doctor. "Medical treatment for self-mutilation very rigorous and severe. Dr. Feder reveals to Haberland that he is the only one providing medical attention for 4,000 foreigners."

Document No. NI-6971 may be marked as Exhibit No. 1333. This is at page 87 of the English and 149 of the German. This

is a circular dated 19 November 1943 from the Social Department, Leverkusen. It shows that the "Italian military internees worked less well than the other foreigners. Plant shops will make lists of unsatisfactory workers and the Plant Security Guard will work such workers on Saturdays and Sundays until they become better."

Document No. NI-8997 may be marked as Exhibit 1384. This is found on page 88 of the English and 151 of the German. It covers correspondence of the 5th, 6th and 7th of January, 1943, from certain personnel as indicated of Leverkusen to Dr. Kuchne regarding conditions in Leverkusen foreign labor camps. On page 88 of the English and 151 of the German, referring to the letter of 5 January 1943, it is stated that:

"Camp Buschweg lacks several interior installations of which Herr Meurer will submit a list. There, too, suitable hygienic ditches for waste must be provided immediately. The present conditions were criticized by the officers who inspected the prisoner of war accommodations. The other groups at the Buschweg also lack these installations."

And then down at the bottom of that page, namely, 88, it says:

"Our present installations for the prisoners of war are also insufficient."

Then on page 89 of the English, the third paragraph from the top says:

"I wish to point out that the Health Authority already intended to quarantine the entire camps which so far Dr. Wolff has been able to prevent. In agreement with Dr. Wolff and Dr. Feder a barrack should be erected at a suitable spot where in case of epidemics, the occurrence of which is quite possible, a fairly large number of sick people could

be accommodated. The authorities demand that in the presence of as many people as we have now, the greatest care be taken. Stringent measures on the part of the supervising authorities might have incalculable consequences for the continuation of production."

Then a little further down:

"We appreciate that a considerable amount has been achieved under very difficult circumstances, however, the campaign for procuring new foreign workers which have just started, demand that new measures be taken. We are no longer able to meet the demands for accommodation."

Then on page 91, which is 160 of the German, from the letter of 7 January 1943 to Director Dr. Kuehne the second paragraph from the bottom of the page reads:

"The camp Zimmer at Flittard is entirely unsuitable for the housing of Russians. Hygienic facilities are inadequate. Space to move is extremely small. The air raid shelters are unfit for use because of the evil-smelling subsoil water."

Then again on page 94 of the English and 157 of the German it is stated that "The competent official physician" that is, the senior officer of the Board of Health, Dr. Wildt—"at first was planning to enforce a quarantine for all camps housing foreigners and for all camps housing girls of the Reich Labor Service."

Your Honor, the purpose of that is to show that the policy which apparently was in effect was production, even at any cost, the cost possible of human life due to the spread and surge of epidemics.

The next document is NI9373 which may be marked as Exhibit 1385. This is found at page 96 of the English and 162 of the German. This is a letter dated 15 January 1944 on I.G.Leverkusen stationery to the Labor Office, attention of

(AFTER RECESS)

THE MARSHAL: The Tribunal is again in session.

MR. VAN STREET: May it please, your Honors, I would like to mention at this time that the required notices are being served on the Secretary General's office as to the calling of certain witnesses, and among those witnesses I would like to mention the following so the defense counsel will be notified, even in advance of the time that they receive the written notice:

Marcel Geonet, Johannes De Bruyn, Werner Mensfeld, Heinrich Vesper, Walter Stothfang, Rudolf Marek, Johann Simon and Jean van Mel.

THE PRESIDENT: Mr. Van Street, would you pardon an interruption if we take up a small administrative matter at this time?

MR. VAN STREET: Certainly, Your Honor.

THE PRESIDENT: Counsel, next Tuesday, November 11th, is a legal holiday for American personnel. Under those circumstances the Tribunal feels obliged to grant them their rights of a free day. Now the question has arisen as to whether we should have a session on Monday the 10th. The Tribunal would suggest the possibility of holding no session on the 10th, providing the day thus lost could be made up on the following Saturday.

We are prompted to make this suggestion for this reason. We know that there is a convenience to counsel for the defense in having an opportunity to confer with their clients on week days, that does not obtain on Sundays. The same situation you will find will be true on a legal holiday. The prison staff will be short, and you might not have the opportunity of conference on the 11th.

We should like to know how you would feel if the Tribunal on next Friday would recess until the succeeding Wednesday, and then be in session on the following Saturday. Not this coming Saturday, but a week from Saturday, so that during that week of the 10th we would have four days in session, and at the same time respect the holiday privileges of the American personnel employees.

Chief Inspector Neuhauser. The letter is apparently an answer to a letter concerning certain prisoners of war employed in Leverkusen, and it states that the "5 French P.W.'s have worked for a year in chemical sector and entrusted with war-important work. They and the Italians are good workers, and their withdrawal would endanger the production. I. G. Could not agree to the release of those workers unless equivalent replacements are received."

That, of course, shows the employment of prisoners of war in contravention of existing treaties and importantly it shows that in the Prosecution's opinion Farben again was not afraid to oppose the officials of the Government when such opposition served its, Farben's interest.

May it please Your Honors, Counsel for Defense has indicated that the letter simply mentions war-important work. That is something which, in my opinion, should probably be postponed until the argument which will take place in the summation.

HL-1071 may be marked as Exhibit 1386. This is page 98 of the English and 163 of the German. Your Honors, instead of a "memo" this should be indicated in the index as "minutes". This is the minutes on a meeting of Leverkusen Plant Offices Committee, 16 March 1944. On page 98 of the English and 163 of the German, the first paragraph states that:

"The furloughing of Poles is officially so regulated that furloughs can only be granted in exceptional cases, such as death or serious illness in the immediate family. On the basis of a previous decision of the Factory Administrative Committee"—that is, the Leverkusen Factory Administrative Committee—"we have nevertheless made no use of this possibility in Leverkusen, because it was feared that a

part of these people would not return. Since other enterprises in the vicinity give furloughs to their Poles and the Poles themselves in some cases know about the official regulation on furloughs, this position cannot be maintained in the long run and the procedure in the future is to be according to the official regulation."

Then it goes on to say that:

"A proposal was made by Schollenberg to invalidate the furlough of the Poles who have a claim to furlough, but who, due to the blocking of furloughs, cannot be furloughed; this proposal is, according to the legal provisions, unfeasible."

And still on page 98 of the English and 164 of the German:

"It was pointed out among other things that Italian military internees, although they have been here for a considerable time, are in a bad nutritional condition."

It goes on to point out that:

"Popp points out that it should be taken into consideration that the people when assigned to us were in bad physical condition."

The next document is NI-8966, which may be marked as Exhibit 1387. This is a letter of 21 March 1944, from G. B. Chemie to Leverkusen. This is on page 102 of the English and 168 of the German. The letter recites that: "As already known, a recruiting drive by the General Plenipotentiary is presently under way in northern Italy, which also involves your plant. You may look forward to having Italian civilian workers assigned to you in the next few weeks, as the result of this drive and I request that you have accommodations ready to a certain extent. The Labor will be assembled in a transit camp."

And then the next sentence: "Since it is extremely difficult to bring the transports in one convey to their destination, they must be escorted by members of the firms. Accordingly, I shall request that you release a suitable person for this mission."

Then in the final paragraph of the letter it states that: "In regard to this matter attention should be paid to the following: the recruiting to this matter should be paid to the following: the recruiting certificates contain numbers of from four to five figures in the case of those drafted for compulsory labor, and six to seven figures in the case of volunteers."

The next document, NI-7073, which may be marked as 1388, is a circular of 3 April 1944, of the Leverkusen Social Department, found at 104 of the English and 172 of the German. In this circular, all guards are obliged to recklessly intervene if Italian military internees are negligent or lazy; and then it goes on to say that since there are not enough guards available the German personnel of I.G. must control them sharply.

Then in the second paragraph "As sharper punitive measure against Italian internees who refuse to work, it is possible on the basis of the above-mentioned order, to cut or take away the feed ration." It goes on to say further that "Hereby it is to be remembered that in the case of a definite work command, not only the Italian military

internees who refuse to work but the industrious Italian military internees working with the others as well would be affected by the ration cut."

The next document is NI-7109, which may be marked as Exhibit 1389. This is on page 106 of the English and 172 of the German, at the bottom of the page. I might say that this is a file note of 15 April 1944 by Warnecke of Leverkusen, of the Examining of the State Employment Office, Opladen, regarding the allocation of foreign workers. Warnecke reports that: "I protested against the last transport of Russians, which included only two men capable of work, apart from eleven children under fourteen years of age and a number of older women. It would be impossible for the I.G. to transfer twenty Italian military internees to the Dynamit A.G. for them."

"The Examining Committee cut down the number to 14 because twelve women and two men over the age of 18 were included in the transport. To statements of the labor office I pointed out that the taking over of these Russian families was not an entirely favorable transaction for us because a large number of older people, over the age of fifty, were among them, who, in addition, were in a very poor state of health."

The next document is NI-8967, which will be omitted. We now come to NI-8992, which may be marked as Exhibit 1390. This appears at page 111 of the English and 179 of the German. The letter, which is dated 17 May 1944, from Seydlitz-Kurzbach, Deputy 8 of the Central Inspectorate for the Care of Foreign Workers, is addressed to Leverkusen. The letter itself starts at 113 of the English and 182 of the German. I would like to make reference to pages 114 of the English and 183 of the German, paragraph 3: "The quarters in the Camps Eigenheim and Buschweg appear to be too cramped, even under consideration of the fact that, in general, all quarters are cramped due to the limitations caused by the air raids."

The next paragraph reads: "This problem arises especially in regard to the Eastern laborers, their families, Poles and their children, at present approximately 190."

Then in the last paragraph of page 114, "The problem of the children of the Eastern laborers and Poles is also connected with this. The lingering about of children over the age of infancy and the age at which they can begin to work in the three main camps would be an impossible condition to be maintained permanently, especially since no end to this can be seen. Their supervision, schooling and manual training urgently necessitates the centralization described above as well as the spreading out and division to nationality."

There, Your Honors, is a parently a public official who is interested in this matter of housing, discussing the training and schooling of foreign-born children.

On page 115 of the English and 184 of the German, the writer touches upon the insufficiency of medical facilities, in paragraph 1A. Then in paragraph 4-C he states that "foreign laborers with stomach and dietary diseases be given such supplementary food as has been approved officially in order to facilitate their early return to work. Corresponding data has already been given to you by Dr. Feder. " And then the writer states "Apparently, there was a lack of the necessary cooperation with the Food Department."

Then the writer states in the next paragraph: "I will shortly return to the question of interruption of pregnancy in the cases of Eastern female laborers and Polish women, also as to how this is to be viewed in connection with future children, and the question of providing quarters."

Then on page 116, paragraph 6, which appears on page 186 of the German, the writer states: "I found quite an amount of vermin in almost all quarters." And that letter is signed by von Seydlitz, Deputy 8 of the central Inspectorate for the Care of Foreign Laborers.

The next document is NI-7100, which may be marked as Exhibit 1391, is found at page 118 of the English and 188 of the German. It is a letter of 21 June 1944 from Feder, who is a medical doctor at Leverkusen, to Mauerer of Leverkusen. He states that the "...drainage system of women's camp Buschweg endangers health conditions. Avoidance of recurrence of typhus epidemic demands immediate attention." He threatens to inform the Public Health Department if Engineering Department has not acted. A new typhus epidemic would cause quarantine and a loss of production. " Then " a final note by Mauerer indicates failure to eliminate the untenable conditions."

NI-8961 may be marked as Exhibit 1392. This is a statistical report or reports, 31 July 1944, from Leverkusen to G.B. Chemie. On page 121 of the English and 190 of the German, the employment break-down is given in the plant department having to do with the manufacture of activated coal. Activated coal, among other things, is used in the manufacture of gas masks. Down at the bottom of the page it is shown that 15 prisoners of war are employed therein; 13 foreign women, and 52 foreign men. Page 123 of the English and 192 of the German, there appears a personnel break-down in the plant department of Leverkusen concerned with the making of chemical warfare agents. At the bottom of the page it is shown that the number of prisoners of war employed in this department is 26; the number of foreign civilian women, 35; and the foreign civilian men, 52.

On page 125 of the English and 194 of the German, there is a personnel break-down of the plant department of Leverkusen having to do with the manufacture of powder and explosives intermediates. At the bottom of this report there is shown as employed as of the date specified --which is 31 July 1955 -- 152 prisoners of war, 154 foreign civilian women, and 337 foreign civilian men.

DR. GIERLICH (Counsel representing Dr. Lumert for the defendant Dr. Kuehne): Your Honors, the Prosecution has made a mistake which might perhaps be justified to some extent because the German expression K-stoff has been used in different ways, as has been become clear in the proceedings so far. Various documents have been submitted in which the expression K-stoff was the code name for Kampfstoff -- for chemical warfare agent.

In the present case, the expression K-stoff does merely signify synthetics or plastics -- Kunststoffe, since in Leverkusen there was no production of chemical warfare agents at all.

If, at the proper time, the Prosecution is not prepared to achieve some sort of agreement with us-- and I would be able to understand that-- then I should like to ask the Tribunal to pass this matter over by

leaving the expression K-stoff, as such, until both parties have been able to bring further proof for their points of view.

Furthermore, I should like to point out that the same expression at any rate in the index also refers to the list on page 194 speaks of gunpowder and explosives section. The wording in the document itself is not known to me, since I have only the German copy. I should like to state in this case, too, that there was no production of gunpowder or explosives in Leverkusen.

The abbreviation chosen in the German text—P.S.V.— means powder and explosives preliminary products.

MR. VAN STREET: May it please Your Honors, we are very appreciative of the Defense counsel calling this to our attention. Of course, there is always a possibility of an error in translation, and we will be glad to hold this matter in abeyance until it can be carefully examined.

THE PRESIDENT: We shall put a question mark opposite the index mentioned in this document, and if you agree as to the proper translation call it to our attention before too long.

MR. VAN STREET: Your Honors, I would like to say one thing with respect to the matter of these indices, and I rather suspect that what I say pertains so far as the indices which have been thus far used by members of the Prosecution and which will be used. It is not unlikely that what I say might also pertain so far as the indices of the Defense Counsel, when they put on their case. In so far as these particular ones are concerned, it was necessary to prepare them in order to move the case along prior to the time that we would have the translation of the document for examination. Consequently, in many instances, when the portion of the index was written we had only what was called a "staff evidence analysis" which was not as complete and sometimes was in error. It has been unfortunate that —

THE PRESIDENT: Well, there haven't been too many incidents. The remarkable thing the President thinks, is the fact that there are so few controversies between you about matters of translations. It is

just one of the problems with which we have to deal, and any time an error is called to our attention we will make a note of it.

MR. VAN STREET: With your Honors' permission, I will complete the summary of the document, subject, of course, to the objection that has been interposed.

On page 127 of the English and 196 of the German, the plant department which has to do with fog acid shows that the total of 13 prisoners of war, 21 foreign civilian women and 25 foreign civilian men, were employed therein.

The next document is NI-964, which may be marked as Exhibit 1393. This appears on page 129 of the English and 239 of the German. This is simply a letter of 25 August 1947 which refers to a teletype message of the 23rd of August 1944, regarding the allocation of Eastern workers, and it is noted that the Eastern workers arranged for have not yet arrived. "We urgently require these workers. Please continue your efforts regarding allocation of these Eastern workers." And this is sent to the Reich Economic Office, Labor Allocation Department. There is no signature appearing other than it is from the Personnel Office.

The next document is NI-3962, which may be marked as Exhibit 1394. This appears at page 130 of the English and 240 of the German. It notes that the I.G. -- It is an I.G.F. Leverkusen inter-office memorandum dated 14 November 1942, to Dr. Haberland. It indicates that "food will be withdrawn from all foreign workers who do not work."

It does not appear on the translation, but there is a notation, Your Honors will see in the upper left-hand corner stamp, and on the original it shows "Received by Management Department, 14 November 1944."

The next document is NI-1076, which may be marked as Exhibit 1395. This is a letter of 22 March '45 from Leverkusen to Labor Office Opladen, and it gives the number of foreign civilians employed as: Male, 2830, and female, 1,464. The number of prisoners of war is given as 300.

The next document is NI-7513, which will be omitted.

We now come to the treatment of Bitterfeld. And the first document is NI-5822. This represents minutes of 3 April 1944 of the Managers' Meeting at Bitterfeld, at which Buergin was present. "It is reported that 58 percent of the employees are foreigners. This percentage included foreign women who perform the work of men." I might say that that is on page 135 of the English and 247 of the German.

The exhibit number will be 1396. Then the minutes of 19 June 1944 of the Managers' Meeting at Bitterfeld, Buergin present. It appears on page 137 of the English and 249 of the German. "In comparison with April, the percentage of sickness decreased from ten to seven. For civilian foreigners, the percentage is seven point five. The Russian PW's, four; and for Italian prisoners, 15. Regulation of leaves for 1944 is announced, and it is stated that they do not hesitate to give leaves also to foreign civilian workers, as long as their homeward journey is blocked. Such leave must be spent in the camp.

The next document is NI-4326, which may be marked as Exhibit 1397. This is found at page 145 of the English and 256 of the German. This is a document which will require a correction in the index. This is a teletype message, dated 13 July 1944, from Pistor who is the commandant of the Buchenwald concentration camp, and it is to the Amtsgruppe D. It simply reports that the assignment of 750 women -- meaning concentration camp inmates -- is for the Bitterfeld plant, and not Wolfen.

Would you feel free to express yourselves now about that matter?

How does the prosecution feel about that suggestion?

MR. SPEICHER: It would be quite satisfactory to us.

THE PRESIDENT: Would you feel free, Dr. Boettcher, to speak now?

DR. BOETTCHER: Mr. President, might I ask your permission to make a statement immediately after the noon recess, since a number of counsel are not here, but at half-past one I can give you the statement.

THE PRESIDENT: Very well.

Now the prosecution may proceed.

MR. VAN STREET: May it please the Court we start with Document No. NI 6220, which may be marked as Exhibit 1334. This is an affidavit of Heinrich Buettfisch, of the 11th of April, 1947, and it is found at Page 9 of the English and 11 of the German.

I would like to call your attention to paragraph 3 which appears on page 10 of the English, and 12 of the German, wherein the affiant, who is defendant Buettfisch, states:

"When the question of employing foreign workers in the plants of I.G. Farben was raised for the first time in the Vorstand by Dr. Schneider or by a Betriebsfuhrer,"

I should like to make a correction here, your Honors. Instead of "Dr. Schneider" next, the word should be, "it", because reference is made to the Vorstand.

"it, as a matter of principle, expressed," "its" for "his", - "agreement as to their employment and the building of sheds for them."

On page 11 of the English, and 13 of the German, paragraph 5, it is stated that:

"Then thereafter, from about the end of 1941, Leuna or some other works of I. G. Farbenindustrie A.G. made requests for workers to the Labor Office or to the regional Labor Office, they were conscious of the fact that these requirements could only be filled by assigning foreign workers, P.W.'s and concentration camp inmates, in view of the fact that the reservoir of German workers had been virtually depleted by this time."

(Mr. Van Street)

The next document is NI 7501, which may be marked as Exhibit 1398. This is an affidavit 20 May, 1947 of Rene Balandier. Any remark will be withheld until the appearance of the Affiant.

NI 7494 will be omitted.

NI 7495 will be omitted.

We thus conclude the presentation of Book No. 70.

THE PRESIDENT: Do you have any announcements to make, Mr. Prosecutor? The Tribunal would like to observe that a week or so ago, we had the experience of a statement covering a number of documents, where they were broken down into groups as these have been in the last two books. Counsel gave us the benefit of one statement of one statement covering the subdivisions in the book. We felt that that was most helpful to the Tribunal. If we could get the story of what the Prosecution was trying to establish by these documents, in a related way, we have not interrupted you today because we hardly thought it fair to counsel after he had started in on that to expect him to change his method of presentation.

The Chair has taken a look at the next book, a glance at it. If you go to the next book, may we suggest that you give some consideration to that? If you can make one statement cover the different subdivisions and then merely mark the book, if you have an opportunity to do it, between now and the time the documents are offered, we think that it accomplishes two very desirable objectives. It does conserve time, and it does get the theory of the Prosecution to the Tribunal in a more connected way, that makes it easier for us to follow what the Prosecution is undertaking to do.

We offer that merely as a helpful suggestion, and you may do what you can or think you can with it.

MR. VAN STREET: Your Honors, I would like to say that we will certainly make a substantial effort to comply with your suggestion, but I

would at the same time like to point out that we considered doing that prior to the presentation of the book in question. I think that the suggestion was primarily pointed towarded the last book which included a lot of Leverkusen material, but each one of the minutes, so to speak, which was discussed, was in effect and many times, in substance tantamount to an additional document or paper. It just so happened that a number of the respective minutes happened to have been included in one document.

THE PRESIDENT: Thank you very much. We are merely offering that as a suggestion. We are imposing no condition on you whatever, but please consider it, and if you think it is useful, try to use it.

Now, Mr. Sprecher, we will hear you.

MR. SPRECHER: Mr. President, we will continue then tomorrow and finish Book 71. We are having a very great difficulty in the time-scheduling of foreign witnesses, and even German witnesses out of the Zone at the moment, but we do plan to call some of the following witnesses tomorrow if they are here, and I know that at least one of them is here:

Grenot, that is book 69; Simon, book 69; Yoham, book 52; Vosper, book 69; and Allen, book 69.

THE PRESIDENT: The preceding one, did you say 69 or 59?

MR. SPRECHER: They are all in book 69 but Yoham, who is in book 52.

Now, Your Honors, if we run out, or finish with these witnesses, or if by some chance we cannot present them, and if some other witnesses whom we have given notice to appear, we may call upon you to hear them. If we do not have any witnesses, we will go on with the following books concerning themselves with Count 3-c of the Indictment, the Auschwitz Complex, and that begins with book 72 and runs on through 73, 74 and 75.

I am sure that will at least keep us busy tomorrow, and even if we do run out of witnesses.

THE PRESIDENT: Thank you very much. It is quite early for adjournment, but we can hardly expect the Prosecution to start on a new book at this hour.

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Court 6 Case 6

Are there any other announcements? If not, the Tribunal will rise until 9:30 tomorrow morning.

(In recess until 0930 November 5, 1947)

Official Transcript of the American Military Tribunal No. VI in the matter of the United States of America against Carl Krauch, et al, defendants, sitting at Nurnberg, Germany, on 5 November 1947, 0930-1630, Justice Shake, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.

Military Tribunal No. VI is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, are the defendants present?

THE MARSHAL: May it please Your Honors, all defendants are present in the courtroom with the exception of defendant Elgnar, who is absent due to illness.

THE PRESIDENT: The Tribunal believes that this is the day that the defendant Hoerlein is scheduled for a medical treatment. If that is correct, he may be excused at the proper time without any further order of the Tribunal.

Are there any announcements from the Prosecution?

MR. VAN STREET: No, there aren't, Your Honor.

THE PRESIDENT: Does the Defense have anything to say?

Then the Prosecution may proceed with the introduction of its evidence.

MR. VAN STREET: May it please the Court, we start this morning with Book No. 71, with the documents appertaining to Wolfen Film. Under Wolfen Film there are six documents. Two of these documents will be eliminated, namely, NI-280 and NI-7503. These documents cover, among other things, the cutting of rations by plant leaders for disciplinary reasons, credit requests for huts to house foreign workers, and reports from concentration camps, namely, Buchenwald, as to the number of its — that is, Buchenwald's — prisoners employed at Wolfen Film. The

documents may be marked in evidence as follows: NI-11063 as Exhibit 1399. NI-2797 as Exhibit 1400, NI-4190 as Exhibit 1401. I should like to note a correction in the index of this document of the "1 March 1944" to read "1 March 1945", NI-11614 may be marked Exhibit 1402.

We now come to the documents under Camera Work, Munich. The first one, NI-6059, will be omitted. NI-3813 may be marked as Exhibit 1403. This is a request to extend the work week to seventy-two hours, and among others involved or affected are five hundred female concentration camp inmates and two hundred Polish female convicts.

The next document is NI-3825, which may be marked as Exhibit 1404. This is a very significant document, and it is a carbon copy of a letter dated 20 January 1944 from the Camera Work, Munich, to the Labor Office, Munich. The letter concerns twelve female Polish prisoners from the Stadelheim prison whose prison terms will expire in February. "Upon advice from the Stadelheim prison it is possible to extend the assignment of these prisoners by way of labor draft," and the Labor Office is requested to pronounce the labor draft of these Polish women and advise the Stadelheim prison accordingly. The purpose is to show the extent to which Farben went in securing slave labor, and the significance of the document is that it shows the holding of these women as prisoners upon the initiation of Farben after their prison sentences had actually expired.

The next document is NI-4038, which may be marked as Exhibit 1405. This is simply a carbon copy of a letter, 2 December 1944, from Camera Work to the commandant of the concentration camp Dachau. The letter shows the scheduled number of female concentration camp inmates employed as 560 and the actual number employed as 451.

The next document is NI-6851, which may be marked as

Exhibit 1406. This is a memorandum, or more correctly, a file note, dated 7 October 1944, from the Personnel Department, Camera Work, Munich, indicating that the transport of 260 Dutch women from concentration camp Dachau would arrive any day; secondly, the document consists of a carbon copy of a letter dated 13 October 1944, signed by Lingg, who was the plant leader at Camera Work, Munich, to the commandant of concentration camp Dachau. The letter recites that "the transport from Ravensbrueck with inmates selected by our eng. corps, Maier and Sachs, should number 260 Dutch women. It is found that the number is only 260, and of these, 63 were not selected by us."

The next document is NI-9551, which will be omitted.

We now come to the documents pertaining to Kalle and Co. The first document NI-2992, will be omitted.

DR. ASHENBACK: Ashenback for Gajewski. May it please the Court, Your Honors, I object to the introduction of the documents concerning the Kalle Company and the documents concerning DAG. Those two firms are independent firms with their own boards of management. Farben just are shareholders, and I, therefore, think that these documents are irrelevant.

MR. VAN STRSET: May it please Your Honors, according to my understanding of the status of these firms, a certain independence of management does exist. However, if I am correctly informed, and if my memory serves me correctly, Farben controlled the stock in these companies and, therefore, in respect certainly to important matters which are contained and which are under consideration in these documents, could have, even if the Farben management did not, exercise some authority.

MR. PRESIDENT: Have there not been some exhibit or exhibits introduced in evidence here that shows the extent of the participation of Farben in one or both of these

corporations?

MR. VAN STREET: I am quite confident, Your Honor, that there has been. For example, in respect to Dynamit A.G. there is a document, NI-8349, which is marked as Exhibit 1090 in Book 53.

THE PRESIDENT: Can Counsel tell us in substance what the extent of Farben's connection with that corporation was shown to be by that exhibit, without our taking the time to examine the exhibit?

MR. VAN STREET: Mr. Amchan, if Your Honor please, has probably gone into this as a phase of aggressive war.

THE PRESIDENT: Very well. We will be glad to hear him.

MR. AMCHAN: Without being able to indicate specifically which exhibit is involved, we have indicated in the record the control that Farben had over Dynamit A.G. and Kalle and Company. Kalle and Company was one of the predecessors of I.G., and in the merger, as the documents show, control went to I.G. Farben.

For present purposes I think it is sufficient to say that we have submitted to the record in the early stages substantial evidence relating to control, and if Counsel is of the opinion that there is no control, why, in our view, that may, if Your Honors find the fact as he states, which we don't think you will find, it would only go to the weight, but prima facie I think the record does show the very close connection between Farben, Dynamit A.G., and Kalle and Company.

THE PRESIDENT: Well, now, just can you be a little more specific as to what you mean by "close connection"? I was wondering, does the Prosecution take the position that there is evidence in the record that shows that Farben controlled and directed the policies of these two corporations

either as a majority stockholder or through any other arrangement? Is that your view?

MR. AMCHAN: That is our view certainly as to Dynamit A.G. There was stock control and membership in the Aufsichtsrat by Farben members, and control was exercised very closely; and if Your Honors will recall, with respect to Dynamit A.G. there was a contractual relationship, whereby Dynamit A.G. had to secure the approval for certain purposes of I.G. Farben's board of directors in order to perform certain acts.

THE PRESIDENT: What is your recollection with reference to this other corporation as to what the ----

MR. AMCHAN: I would have to check it. My recollection is stock control, because it was one of the predecessor companies which came in on the merger in 1926, but that little fact we can check during the recess and advise you more particularly. It is both stock control and management direction.

THE PRESIDENT: Then I take it that it is the view of the Prosecution that there is sufficient showing in the record to make this evidence competent under the general allegations of the Indictment, that these defendants through the instrumentality of Farben did certain acts. Is that your view?

MR. AMCHAN: That is our view.

THE PRESIDENT: Now if you have anything else to say, we will hear you, and then we will hear the Defense.

MR. AMCHAN: We will pass.

THE PRESIDENT: Very well.

DR. ACHENRACH: May it please Your Honors, in my mind it is not so much a question of control. I think the Defense can help the Court by admitting that, in fact, I. G. Farben are majority stockholders, but assuming the stocks were sold to some bank or some individual so that there would be other shareholders, would then those shareholders be responsible for what the board of management does in the firm? And that is why it is not for me so much a question of control. I think that as far as the management of the firm is concerned, since it is an independent firm and has its own board of management, the responsibility of Farben cannot be extended to the management of the firm. That is the point the Defense wanted to submit to the Tribunal.

THE PRESIDENT: Did you wish to be heard, Dr. Gierlichs?

DR. GIERLICH: Yes, Gierlichs for Geheimrat Schmitz. Your Honors, may I point out to the Tribunal that the two Prosecution witnesses, Struss and Dencker, have already been heard in connection with the relations of DAG and I. G. Farbenindustrie. The witness Struss, to whom the Prosecution has certified that, as the chief of the TEA office, he was very well informed about the relations of DAG and Farben, testified when examined by me that one could not speak of any influence on the technical direction of the enterprise, that the technical direction of the enterprise was completely independent. That is what he stated, and he also extended that statement to the explosives group, the WASAG. The witness Dencker in the cross examination also took this same point of view. I believe that we will extend this trial beyond any reasonable limit if the Prosecution want to argue exclusively on stock participation, without proof that any of the twenty-four defendants participated in any active way in the formulation of any decisions of those firms, if this material is submitted as evidence here. I want to point out that a proceeding of that nature would in my opinion open the door for the Defense to bring favorable material for the defendants in the same way, in similar cases, and that

they would not be forced to confine themselves to these two firms only; that would extend the limit of this trial. I believe that this would not comply with the frequently expressed desire of the Tribunal to confine ourselves to the really essential points.

DR. ACHENBACH: Your Honor,

THE PRESIDENT: State your or the record will not show who is speaking.

DR. ACHENBACH: Achenbach for Gajowski. I may add one detail. When I look at the documents relating to DAG, plants are mentioned which even do not belong to DAG directly, and in fact none of the gentlemen in the dock know even the names of the Brauhaus plant, Bartelsee plant, or Aschau plant. In fact, the plants quoted in the documents relating to DAG there belong to the State, to a firm owned by the State called Montana. The plants are operated by another company, not even DAG, the Verwertchemie. It is true that the Verwertchemie itself then does belong to DAG, but all this has nothing to do with I. G. DAG and Kalle as well are independent firms, and as far as their management is concerned, they are independent, and I don't think that shareholders can be held responsible for what the management of a firm does.

DR. DIX: Dix for Schnolder.

I want to refer to one point only and a point of principle. The single point that I am mentioning is the fact that the witness Struss testified here -- and I assume that the Tribunal will remember this case -- that he and the TEA and thus Farben did not know anything about most of the plants which DAG built during the war. He himself learned these things only from the files of the DAG which were made accessible to him after the War by the American Military Government. The point of principle that I want to point out is the fact that there is no criminal responsibility even of the majority stockholder, for this would be unlimited. One should only think of the innumerable foreign shares which are held outside of Germany.

And the first sentence in paragraph 6:

"Of the twenty to thirty thousand workers of the Leuna works, an estimated fifty per cent were foreigners of all nationalities, P.W.'s and concentration camp inmates."

The affiant mentions that, at the bottom of page 11 of the English and 13 of the German:

"Besides the forced labor group was obliged to wear at all times a badge affixed to their clothing with the lettering "OST" in the case of the Russians, and "P" in the case of the Poles. The duties of guarding the camps were performed by the industrial police, who originally had been armed with clubs and afterward, on orders of Dr. Schneider, with guns. Moreover, the industrial police also used watch dogs."

Paragraph 8 which is at page 12 of the English, and 14 of the German:

"In 1940 or 1941, if I remember the year correctly, I saw for the first time concentration camp inmates at work at Leuna; at that time 50 to 60 inmates were employed at the dress heaps. I recognized the inmates from their striped clothing and from the fact that they were guarded by SS troops. Towards the end of the war the problem of securing labor became increasingly critical, resulting in requesting more and more concentration camp inmates thus considerably boosting at times the number of inmates employed at Leuna."

May it please Your Honors, this document is purposed not only to show the use of the categories of forced workers as mentioned, but also to show to the Tribunal, that by these outward manifestations of identity, such as striped clothing and the "OST" in the case of the Russians, and "P" in the case of Poles, that it was notice to anyone who came into contact with them, of the classifications of these workers.

In paragraph 9 which appears on page 13 of the English and 15 of the German, the affiant states:

"Aside from Leuna, I have also seen concentration camp inmates at work in the following plants of the I.G. Farben: Heydebrock, Schkepau

MR. AMCHAN: If Your Honors please, it seems to us that what Counsel for the Defense is attempting to do, under the guise of a motion addressed to the relevancy of a document, is to argue matters of fact which may be in issue and which they have to meet as part of their case in chief. We think the record is quite clear that prima facie, as it stands now, we have established the close connection between I. G. Farben and these subsidiary corporations involved. The record in its present stage is enough, we submit, to indicate the relevancy of these documents. What the Defense is doing, it seems to us, is substituting for proof, which they have to undertake on their own behalf in their case in chief, argument as to, first, the fact and, second, as to the legal consequences of the fact as they assert it. Now, we say again, relevancy only is involved --

THE PRESIDENT: Well, this Tribunal knows the difference between competency and the weight to be attached to evidence. We are not concerned about that, but in order to get the matter narrowed down to a simple issue, it seems to me that the Prosecution is committed to the theory by this Indictment that these defendants had such a relationship to Farben, by reason of offices or positions or associations, that the actions of Farben may be regarded as their actions, insofar as the actions of Farben relate to the matters charged in the Indictment. Now, that, as I understand it, is the theory of the Indictment, and I am wondering how far you would carry the position taken by the Prosecution with respect to the participation or the connection of Farben with some other corporation; and if you take that step, and then there was a third corporation that was controlled by the second corporation which in turn was controlled by Farben, some place you would reach a point of a break in the causal connection between the active agent and the responsibility that these defendants bear, so far as their association with Farben is concerned.

The President has indulged a good deal of argument here, because, in the first place, it seems to him to be important that we have a pretty clear conception of just what this record does show from a factual standpoint before we approach the question of the competency of this evidence. If the Prosecution has anything further to say, we will be glad to hear you.

MR. ANCHAN: The present question before Your Honors, at least factually, is limited to an immediate subsidiary controlled by virtue of stock ownership, and as the evidence shows, by management direction.

THE PRESIDENT: Now there is an issue in which there seems to be a lack of agreement between Counsel.

MR. ANCHAN: That is correct, because they have not put in evidence --

THE PRESIDENT: Now, in other words, Counsel for the Defense has conceded, as we understand, in at least one of these corporations if not both, the matter of stock control, but from the remarks made by Counsel for the Defense a little while ago, there seems to be a dispute of fact as to whether or not there was management control --

MR. ANCHAN: That is right. That is precisely our position.

THE PRESIDENT: ... or control in such a way as to make matters of policy subject to the domination of Farben. That seems to be the issue, and don't you think that is more important than the matter of just nominal stock control?

Well, if Your Honors please, it doesn't appear to us that this is the time to decide the issue of fact which counsel raises. It doesn't appear to us at this time to go into issues of fact as to the extent to which stock control goes into the phase of management.

Our point is: on our prima facie case we have made a showing by virtue of stock control, and at least our proof as to management is sufficient to admit these documents, and I don't think in the orderly procedure of a trial we can divert to decide issues of fact which are not involved at this point.

DR. DIX (COUNSEL for defendant Schneider): In regard to Count 1 of the Indictment, which solely speaks of these plants so far, it is understandable if the Prosecution mentioned these plants according to their point of view, since they believed to be able to show that the production and activity of these plants had an influence in the knowledge of the defendants. However, the affair of Count 3 of the Indictment is quite different. Here we are concerned with questions of workers, and the responsibility of the defendants on that point.

I should like to mention that neither Kalle nor D.A.G. were in the advisory council of the enterprises of the Farben corporation. It is true that the plants of D.A.G. at least are not contained on the chart of Farben, but that they were shown separately by the Prosecution on a chart.

The Defense does not take a narrow point of view in this connection; this is shown by the fact that the Ammonia plant Merseburg, which was an independent plant, was mentioned as part of the Farben enterprise.

If, under Count 3 of the Indictment, the point of view of the Prosecution is to be admitted, then this trial would

be delayed for a considerable time, since the defendants should be permitted to bring other evidence in their behalf to disprove the allegations under Count 3. The evidence given by the Prosecution under Count 3 is in my opinion not sufficient to prove that the defendants were responsible for worker questions of the D.A.G., and I refer to what I have said before.

Besides that, the result of the proceedings so far must be taken into consideration, and the witnesses Struss and Dencker express their opinions and prove by the fact that there was complete independence in fundamental questions from Farben.

DR. GIERLICH (Counsel for defendant Schmitz): In reply to what Mr. Amohan said, I merely want to point out that this is not a subsidiary company -- that is, the documents offered here do not refer to the D.A.G. as a subsidiary company, but they refer to plants which, according to the chart introduced by the Prosecution, are enterprises of the Verwertchemie, that is, plants which were owned by the State and which were merely operated by a subsidiary of D.A.G. This is a chain which extends the links even further.

THE PRESIDENT: If Counsel please, the Tribunal deems this matter of sufficient importance to warrant a conference of its members, and we will rise for a recess for a little while here.

Does Prosecution have something to say?

MR. VAN STREET: Yes, Mr. President, if I may. It might be helpful if you would refer to the first document under Kalle & Company, which is an affidavit of Wilhelm Maus.

THE PRESIDENT: That is not in evidence.

MR. VAN STREET: Well, I withdraw the omission, if I

may, Your Honor.

THE PRESIDENT: You change your mind about introducing it?

MR. VAN STREET: Yes, Your Honor. In other words, this matter had not come up at the time that I asked that the document be omitted.

THE PRESIDENT: Then give us a little time for a conference, and we will take into account in the conference that the Prosecution has now asked to offer the document NI-2992, which it had previously indicated it would not offer. We will take that into account. We will not rule on it.

MR. DUBOIS: Just one matter, Your Honor. I do not think that you can necessarily draw a line here as to whether or not we are attempting to go, as you might say, to the immediate subsidiary, or to a subsidiary two steps removed, or to a subsidiary three steps removed. I don't think any such arbitrary line can be drawn.

We do feel that in the case of D.A.G. that the documents that we have submitted to date establish a prima facie case in that particular instance of sufficient control so as to hold these defendants responsible for this type of activity in that concern. As a matter of fact, if necessary, additional documents which the Prosecution has not introduced concerning D.A.G. could be introduced, if a prima facie case has not as yet been thought to have been established.

And I do think that on the basis of the record most -- if not all -- of what the Defense has said is a question for their defense.

DR. ACHENBACH (Counsel for defendant Gajowski)

May it please the Court, I just should like to make it

quite clear, Your Honor, that I am not raising an issue of fact; I am just submitting to the Court a legal problem, and I think there is no prima facie evidence to warrant the admission of these documents.

I am exclusively arguing the point of relevancy or irrelevancy, and my thesis is that since these two companies are independent companies with their own boards of management they should not be dragged into this trial. And I may say one last word. It is also -- and there I should raise the issue of common sense -- practically all firms in Germany have employed either foreign labor or conceivably other labor -- for instance, foreign labor. There is no particular point involved in this thing.

My main point is that, as I said before, these are independent companies; one cannot say that they employed foreign labor because I.G. Farben told them, since all firms in Germany did so, practically speaking.

THE PRESIDENT: Well, the Tribunal has heard enough argument for the time being; we will rise.

(A recess was taken.)

(AFTER RECESS PERIOD FOR CONFERENCE)

THE PRESIDENT: While the Tribunal was in conference, information reached us that the Prosecution desires to make a further statement in connection with this matter. We will hear what the Prosecution has to say.

MR. DUBOIS: The Prosecution has decided that, at least for the time being, we are not going to offer these documents in evidence. We want to make our position clear, however. We believe that, as we said before, these documents are relevant for the reasons stated. However, our present feeling is that the proof that we have introduced to date under this count, is so sufficient that the addition of these documents will not add substantially to it in any way and would possibly tend to prolong the trial.

Solely in the interest, and only in the interest of expediting the trial, we believe that, at least at present we feel that we can dispense with them. We, however, reserve our right to offer them at a later date, and if we do we may at the same time offer additional documents relating to DAG.

THE PRESIDENT: Very well. The Prosecution may proceed with the presentation of its case.

MR. VAN STREET: May it please Your Honors, we will conclude the presentation of Document Book 71 by presenting into evidence Document NI 11060, which may be marked as Exhibit 1407. That is under, "Rottweil" in the index. This is an unsigned memorandum, 25 August 1943, to Dr. Osterberg, plant leader at Rottweil. A breakdown of workers at Rottweil is given. Among others it includes 249 Russians and 272 Frenchmen.

May it please Your Honors, I have been advised that there has been a waiver by the Defense of the cross-examination of certain affiants.

THE PRESIDENT: Are you in a position to state for the record the names of the witnesses you refer to?

MR. VAN STREET: I shall do so, Mr. President, and with your permission I would like to summarize these affidavits for the record at this time. They were not summarized yesterday.

THE PRESIDENT: Perhaps to keep the record straight, if you would state the names of all of the individuals in the group, and then we will have a record that the cross-examination has been waived as to all of them, and then you may continue on, showing your facts.

MR. VAN STREET: Very well, your Honor.

THE PRESIDENT: If you do not have them handy....

MR. VAN STREET: Your Honor, I will have them in just a minute.

THE PRESIDENT: Very well, Sir.

MR. VAN STREET: Your Honors, the names are as follows: Dr. Johann Simon, Johannes DeBruyn, Heinrich Vespor. That is all. There are two affidavits so far as Heinrich Vespor is concerned.

THE PRESIDENT: The Prosecution having stated the names of those three witnesses, the Tribunal will consider that the cross-examination of these witnesses has been waived by the Defense, unless a request for cross-examination is made at this time.

There being no such request, it is ordered that the record may show that the defendants have waived the cross-examination of the witnesses named in the statement of the Prosecution.

MR. VAN STREET: Reference is now made, if Your Honors please, to the Johann Simon affidavit, which appears in Book 69 at page 130 of the English and 163 of the German. The Exhibit number -

THE PRESIDENT: Just one other question. Has that affidavit, and the other two that you referred to, been introduced in evidence?

MR. VAN STREET: Yes, Your Honor.

THE PRESIDENT: Very well.

MR. VAN STREET: The exhibit number of this particular affidavit is 1360. Reference is made to page 130 of the English and 163 of the German, wherein the affiant is speaking of his recruiting trips:

"During this time I obtained my regular salary from Hoechst and my expense account from G. B. Chem. My task was to examine plants of the chemical and textile industries in Upper Italy. The examination had the purpose to determine to what extent the labor of these plants could be made available for allotment in Germany. The result of these examinations was submitted in a report which went to the labor board for chemicals in Milan and to the German labor allotment boards. The German labor allotment boards negotiated with the Italian labor offices and induced them to recruit the Italian workers suitable for employment in Germany. The Italian labor office summoned the workers to appear for the purpose of a medical examination by an Italian physician to determine the physical fitness of the individual, and for the signing of a labor contract."

I now refer to the affidavit of Johannes De Bruyn, which is NI 11613, Exhibit No. 1367. This appears on page 164 of the English and 207 of the German. About the middle of the first page, the affiant states:

(Mr. Van Street)

"It is difficult to describe the life in the camp and in the factory in detail; I can only say that it could be called "inhuman". There were workers of all nationalities in the factory in Hochst. I suppose that they numbered about 10,000 persons. There were also Italian, French, and Russian prisoners of war among these persons, but they were accommodated in another camp. Russian soldiers were brought to the camp at the end of 1944, and in spite of their being wounded they were immediately put to work."

Affiant further states:

"We lived in dirty barracks which were full of vermin; we slept on straw mattresses which were never renewed. The camp was fenced off with barbed wire and guarded by plant guards. In the factories the workers were frequently beaten by the foremen, mostly in the face; this occurred especially in the case of Russians."

"In the camp the workers were frequently beaten by the camp leader. I myself witnessed several times that my comrades were beaten with fist, stick, or cudgel."

DR. TRIBILLA: Mr. President, I do not have a formal objection to raise, but I wish to point out that all of these documents were already submitted yesterday, and that these same parts were read yesterday.

MR. VAN STREET: I believe, Mr. President, and your Honors, that defense counsel is in error. I think I passed these at the time with the notation that the remarks would be made when the affiant was called for cross-examination.

THE PRESIDENT: That is the recollection of the Tribunal. I think that you did not summarize the documents yesterday. When they were introduced you stated who the affiants were, and maybe some general observation about what the affidavit was. However, you did not summarize, I do not believe.

MR. VAN STREET: I may state though that I will make it just as brief as possible.

and Wolfen or Bitterfeld. In general, the Betriebsfuehrer concerned made reports to the Vorstand in regard to the assignment and employment of concentration camp inmates although an official approval was not required for each individual case."

The next document is NI 8925 which will be omitted.

We then come to NI 6285, which may be marked as Exhibit 1335.

This is found at page 21 of the English and 25 of the German, and it is a protocol of 31 January, 1941 -- that is a correction, - of the meeting of Ludwigshafen management:

"It is resolved that prisoners of war will be used on a larger scale, and 1800 more foreigners will be requested."

Defendant Wurster was present at this meeting and signed the minutes.

DR. FRIBILLA: If I was in error, I beg your pardon.

THE PRESIDENT: Very well. You may go ahead, Mr. Prosecutor.

MR. VAN STREET: The affiant says at the bottom of page 164 of the English and 207-208 of the German:

"What was particularly noteworthy at Hoechst was the medical treatment of the foreign workers who were ill. This treatment was actually brutal, so that it was forbidden to be sick it would cost one's life.

"I know persons who, when they were sick, did not receive treatment and remained in the camp and did not go to work; they were sent to a punitive camp, Hedderheim, for a period of 6-8 weeks.

"I saw children and old women in the factory in Hoechst. Children between 10 and 12 years and women over 60 years from the Ukraine, all of whom had to work."

And DeBruyn mentions that he lost 38 kilograms. He further states that the prisoners of war in the Hoechst factories worked in all departments of the factory.

I now refer to Exhibit 1368, which is NI-2995, the affidavit of 9 December 1946 of Heinrich Vesper, which is at page 165 of the English and 208 of the German.

The affiant points out that there were about 300 foreigners employed in Autogen and 500 in Griessheim, and of particular significance is his statement that "shortly before the Americans arrived a regulation came out from the management Hoechst that all papers and documents on the employment of foreigners must be destroyed."

One more for summary: Exhibit 1369, NI-2975, which is likewise an affidavit of Heinrich Vesper, 15 January 1947. It appears at page 167 of the English and 211 of the German.

The affiant states that "French prisoners of war employed in the Autogen plant were used in the production of welding and cutting tools for delivery to the armament industry", and that the Russians were accommodated in a camp and guarded by plant guards armed with pistols.

May it please your Honors, that concludes the presentation of the

documents in this phase of the case.

We will next go to a few witnesses, but before that, I feel that I would be somewhat remiss if I did not ask the Tribunal to take judicial notice of the recent judgment handed down in the Oswald Pohl, et al, case, particularly pages 14 to 19.

With your Honors' permission I would like to underline a few excerpts from these pages for the record.

At the bottom of page 14—

THE PRESIDENT: Just a moment.

DR. MEYER: Your Honors, I object to this. In my humble opinion this is argument, and therefore I do not think it is proper that the Prosecutor refer to the judgment of the Oswald Pohl trial.

THE PRESIDENT: Unless it relates to some issue of fact, I suspect counsel for the defense is correct that. If your purpose is to show a ruling that might lay down some principle of law, it ordinarily would come in argument, unless you wish to call the Tribunal's attention to it as it may relate to some evidence that you are about to, or expect to offer.

MR. VAN STREET: May it please your Honors, I think it is entirely pertinent. The only difference, perhaps, between reading excerpts of this particular report or judgment into our record is that this is relatively new. I dare say that possibly there would not be any objection if this were a year or two old, but it is submitted that time is not needed to season the appropriateness of these particular excerpts. However —

THE PRESIDENT: Could you tell us your object for wishing to put it into the record at this time, in what connection you are suggesting the entering of this excerpt into our record?

MR. VAN STREET: Simply to spread clearly on our record the particular excerpts which show the general theme and pattern of the slave labor program, which, of course, was also included in the IMT judgment, and some of the excerpts from that judgment have been already spread on this record.

THE PRESIDENT: The Tribunal is at a loss to see the relevancy of

entering this excerpt from the opinion of another Tribunal on the records of this Tribunal. We would like to know if counsel is offering it because the Prosecution thinks that it establishes some fact, or whether it is offered as stating some legal principle. If we know more about the purpose of the offer, we might be able to rule on it a little more intelligently.

MR. VAN STREET: If your Honors please, rather than take up the time of the Tribunal at this time, I would just as soon withdraw the offer, because undoubtedly the judgment will come to the Tribunal's attention anyway.

THE PRESIDENT: Very well.

MR. ANCHAN: If your Honors please, by withdrawing the formal offer of reading it into the record we do not withdraw the fact that we want to call it to your Honors' attention, and ask you to take judicial notice. We are just omitting it physically from the record.

THE PRESIDENT: The purpose of our ruling is that we have access to and will read the opinion of any court that is in point here upon any proposition that is pertinent to the problem that is before us, and it is proper for counsel to call our attention to it and request that we read it, but after all, it takes time and paper, to put matters of that kind into our record and we do not see the necessity of doing that.

MR. ANCHAN: We agree with your Honors, and hence we have withdrawn it.

DR. DIX (Counsel for the defendant Schnoider):

Since a reference to this judgment is made here, I assume that it is part of the evidence in this trial, and therefore I should be grateful if the motion that the defense made could be granted. It is not always easy for us to obtain a copy of that judgment, and it is otherwise not very easy for us to read it.

THE PRESIDENT: The Tribunal will stand on its ruling that that is not a proper matter on the record of this Tribunal at this time. The judgment is a public record, and I am sure, that counsel for the defense can have

access to it if they wish.

You may proceed.

MR. VAN STREET: The Prosecution calls--

THE PRESIDENT: Just a moment, Mr. Marshal, before you bring in the witness. It is now the regular time of our morning recess. We had some time out while the Tribunal was in conference. The President has learned in the past that sometimes members of counsel make appointments to see people or to use the telephone at the time of the regular recess. If there is anyone who is in that position, we think it only fair to take our recess at the regular time, even though it is a loss of some period of time. Do you desire to recess?

(Indication by counsel they did wish a recess.)

The Tribunal will rise for its morning recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Prosecution will call its witness. Will you state the name of the witness for the record, Counsel?

MR. VAN STRAET: The Prosecution, Your Honors, is calling the witness Marcel Grenot (M-A-R-C-E-L G-R-E-N-O-T).

THE PRESIDENT: The Marshal will bring in the witness. (The Marshal produced the witness). The witness will stand to be sworn. Do you swear to speak without hate nor fear, to say the truth, all the truth, only the truth? Raise your right hand and say "I swear."

WITNESS: I swear.

THE PRESIDENT: You may be seated.

MARCEL GRENOT, a witness took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. VAN STRAET:

Q. Mr. Witness: will you please state your full name?

A. Marcel Grenot.

Q. What is your address?

A. 142 Rue de Charonne, Paris.

Q. What is your age?

A. Thirty-eight. 26 October 1909.

Q. Mr. Grenot, I believe that you were a member of the armed forces of the French Army; is that right?

A. Yes, that's right.

Q. What was your status or rank in the French Army?

A. I was a non-commissioned officer.

Q. Mr. Grenot, I now ask you if you have a copy of the affidavit given by you on 30 May 1947?

A. Yes, I have it here.

Q. I now direct your attention to that affidavit and ask you if this affidavit was given under oath and that you stated the pure truth and nothing but the truth?

A. Yes, I said the truth and the full truth and nothing but the

truth, and what I said I confirm, and I am ready to state it all over again if necessary.

Q. Have you had an opportunity recently to examine this affidavit in detail?

A. Yes, I have read it over again, and whatever I said in it is quite correct, and I affirm it again.

Q. Mr. Grenot, do you have any additions to your affidavit which you would like to make at this time?

A. I have only one thing I might add, because when I was interrogated first I didn't have the time to state everything. I did remember a case similar to the case of the Frenchman who was killed; this was the case of a Russian. It's true that the man was not killed but only wounded by a factory policeman who was shooting at something or other and just shot the man without any warning. That's all I could add. I saw that myself, too.

Q. Mr. Grenot, I kindly ask you to answer any questions which are put to you as briefly and succinctly as possible.

A. I quite agree.

Q. The witness is now with defense counsel.

DR. BELISZELER: (Counsel for the defendant Dr. Wurster.) Your Honors, first I should like to draw the attention of the Tribunal to the following situation. In the affidavit of the witness Grenot was written originally in the French language. In the German copy which was made available to the defense in their Document Book, there is a certification of the translation following the document, in which, Mr. Herbert Ungar certifies that he is fully conversant with the English and German languages and that the preceding document is a correct translation. In other words, there is no certification of the translation from the French original into the German language. I do not know whether the Tribunal has a certification of the translation into English. This seems to me to be a very important question. In going through the French original text I found the follow-

ing in the German text it says at the end of the fourth paragraph, and I quote: "In the same way the German foremen..." The plural is used - "carried out physical punishment on the foreign workers." In the French original it says: "le maitre allemand." It says, "the German foreman", which is singular. I think that this is an important distinction, and that this distinction makes it necessary that we have a complete certification of the translation, but in order not to hold up the proceedings I think it will be best if the witness is not allowed to refer to his affidavit but reiterates his entire statements orally before the Tribunal.

The PRESIDENT: Counsel has mentioned two or three things. First we may say that the copy of the document that is found in our book 69 in English purports also to have a copy of a translation certificate. Secondly, the sentence to which counsel referred, being the last sentence in the fourth paragraph of the affidavit proper, in our copy reads "the German foreman". That is, it is in the singular. Third, the Tribunal has already indicated, in the case of a former interrogation, that it would not, until some abuse was shown, rule that a witness might not have a paper or a document in his hands from which to refresh his recollection. That is, however, a circumstance which the counsel conducting the cross examination may show to the Tribunal, that the witness is testifying from a memorandum or a document as affecting the weight to be given to his testimony, if you think it does affect the weight of his testimony; and, fourth, if the observations of counsel were that the witness should be required to state again the facts contained in the affidavit, the motion must be overruled. The affidavit, under the practice that we are following here, constitutes the evidence in chief of this witness, and the counsel for the defense has a full and complete right to thoroughly cross examine the witness as to the contents of the affidavit. Will counsel please proceed with the cross examination?

Just a moment, Counsel, please.

Mr. Witness, have you been advised as to the purpose of the two light bulbs in front of you?

THE WITNESS: No.

THE PRESIDENT: Then the Tribunal would say that, as you well know, it is necessary to translate your testimony. That requires that we go at a rather slow speed. The yellow light is a signal that you're speaking too rapidly, and, when you see it, please go more slowly. The red light means stop until you're told to continue.

The defense may proceed with the cross examination.

DR. REINZELER (Defense Counsel for the defendant Wurster): Your honor, may I ask the Tribunal to order the Prosecution to give us the certification of the translation from French into German, in order to enable the Defense, in the case of further errors of language, to draw the attention of the Tribunal to such facts later.

THE PRESIDENT: That's a proper request, and the Prosecution will be expected to furnish you with the certificate.

CROSS EXAMINATION

BY DR. REINZELER:

Q. Witness, first may I ask you to tell me briefly what your civilian profession is?

A. Commercial representative.

Q. Witness, did you have any technical education?

A. No, never.

Q. In what branch are you active as a commercial representative?

A. Stylograph.

Q. Witness, according to your affidavit, you had the misfortune to become a prisoner of war. Thereafter, you were sent to Germany as a civilian worker, and you furthermore had the misfortune in April 1944, to be taken prisoner when you desired to return to your home and for that reason tried to escape. How did it come about that you,

as a civilian worker, after your attempt to escape became once more a prisoner of war?

A. That was simply a punishment inflicted on us. It was a rule that whenever one of the civilian converted workers was caught in an escape, he was reconverted into the status of prisoner of war.

THE PRESIDENT: Counsel, will you pardon a suggestion? Since we're here dealing with three languages, insofar as you can, will you make your questions short, so that the translator will have an opportunity to pass it on to the witness?

BY MR. BELMONT:

Q. Witness, in your affidavit you state that from May 1944 until April 1945, you worked at Ludwigshafen?

A. Yes, that is correct.

Q. You furthermore state that in April, 1945, you were liberated by American troops?

A. Yes, that is correct.

Q. May I ask you where you were liberated by American troops?

A. At the Eppenheim Hospital, where I had been sent because I was sick for lack of food.

Q. Since when had you been ill?

A. Well, I was freed in April. It was a month before that, so that would bring us to March 1945.

Q. Did you then, up to March 1945, work at Ludwigshafen?

A. Yes, that is correct.

Q. Witness, if I now put to you that, according to your wage slip of the Ludwigshafen plant, with the date of 25 December, 1944, and up to the time of your liberation you were ill, will that in any way cause you to correct your statement? Does that in any way refresh your memory?

A. It is quite correct that I was sick as from 25 December and I was in the camp ward, in the camp infirmary, and I went to town once in a while to work to get a little food. That is correct. I

was not paid as from 25 December and I had hunger edema.

Q. Witness, I believe that with three languages it is impossible for the interpreter to remember a statement as long as this and to repeat it completely and correctly. May I therefore ask you to repeat your statement again in brief sentences, so that the interpreter can repeat your answer after each brief sentence. Otherwise it is impossible for the German audience, at least, to follow your testimony.

Witness, if I remember correctly, you said, did you not, that up to March 1945 you were actually working in the plant of Ludwigshafen?

A. You are quite correct. If I said that I worked in the factory of Ludwigshafen that was a figure of speech. I went out to work for civilians, from the camp. I did not actually work in the factory. That is quite correct. Not in the factory itself.

Q. Witness, would you please explain to us how it was possible that you, as a prisoner of war, could enter the town of Ludwigshafen in order to work there for civilians?

A. Well, anyhow, I give you my word of honor that that's the way it was. The civilians would come to the camp. The authorization would be given and we would leave the camp by groups of seven, eight or nine to help those people in their construction work in Ludwigshafen, in the town. That is correct.

Q. In other words, you were assigned to a group of prisoners of war who worked in the town?

A. Yes, that is correct.

The next document NI-6287 which may be marked as Exhibit 1336, is found at page 25 of the English and 32 of the German. This is a protocol, 21 August 1941, meeting of Ludwigshafen management, wherein it's reported that since the beginning of World War II, Ludwigshafen-Oppau has employed nine thousand more workers than before; 800 Croats and about 700 French workers are expected. It is reported that sick German workers averaged 2.7 foreigners around 6% and prisoners-of-war around 13%. Hurster was present at this meeting.

I would also like to state that whereas the English copy of the translation shows the signature, an inspection of the original will show that it was signed by Hurster.

The next document is NI-9369 which may be marked as Exhibit 1337. It's found at page 30 of the English and 40 of the German. This document is a photostatic copy of each of two letters, 21 August 1942 and 26 August 1942 between Schnitzler and Ritter. Ritter, your Honor, was representative of the Plenipotentiary General for Special Questions of Chemical Production, that is, Krauch, and it's in regard to a contract between Ludwigshafen and Francolor regarding French workers for Ludwigshafen and Schnitzler states in his letter that the quota of French workers for Ludwigshafen is limited as Francolor is working mostly for the German Armament and needs these workers and Schnitzler's letter and a copy of his own to Ambros, who will handle it directly and who will be able to furnish Ritter with exact figures in regard to importing French workers.

The next document is NI-6308, which may be marked as Exhibit 1338, page 33 of the English and 45 of the German. This is a protocol, 27 March 1942 of the meeting of the Ludwigshafen management and in this meeting at which Hurster was present, it was reported that the first transport of Russian civilians has arrived from the Ukraine. Here again, if your Honor please, the English translation shows the signature illegible but inspection of the original will show that it

Q Witness, I find a certain contradiction in that you say on the one hand that you were ill and, on the other hand, that you were ill and, on the other hand, that you were assigned to a group of workers in the town.

A We were what the French would call LIMPTS DE SERVICE. That is, we were exempted from heavy work in the factory. We were sick because the work in the factory had been too hard for us, and so we were assigned to groups working in the town to do minor work there in order to be able to work and get some food for ourselves.

Q Did you go to work every day, into the town?

A Not every day. We would go one day. Then the next day we would rest, and the day after we would start again, or we would go in the morning and not in the afternoon, or vice versa. It was not work of such continuity as in the factory at all.

Q Then you can only speak about the work in the I. G. plant Ludwigshafen from May 1944 up to December 1944?

A Oh, but that's quite sufficient to have my testimony stand and stay correct. I saw quite a bit during that period, you see.

Q Did you notice, during that period, that the air raids gradually disturbed the normal life and the plant at Ludwigshafen to its disadvantage?

A It is quite correct that these air raids started on a high level on 26 July 1944 and increased in strength and in frequency from day to day, but I don't think that should have hindered these people from treating the prisoners of war as they should be treated.

Q It is your opinion witness, that, starting from 26 July, life in Ludwigshafen can no longer be considered as being quite normal?

A Well, I would still say that there was normal life at Ludwigshafen during the months of July, August, September, and part of October. I would say that as from October or November you can no longer speak of really normal life in Ludwigshafen.

Q Witness, then the air raid of 26 July, which you consider to be very severe, cannot have been all too severe, can it?

A Well, I wouldn't say it was a heavy raid as far as the town of Ludwigshafen is concerned, but it was a very serious raid as far as we were concerned, because bombs dropped on our camp and eighty-one of our comrades were killed.

Q Do you still remember that this air raid caused very serious damage throughout the entire plant?

A Not that particular one. It was just some bombs and one airplane, I think. There was no special serious damage to the factory at all during that raid of 26 July.

Q Did I understand you correctly? Was there only one airplane?

A Yes, one plane and even only one bomb, and it fell on the camp. This bomb, and it fell on the camp. This bomb was dropped on the camp.

Q In July 1944 there was one air raid with one airplane?

A I think counsel has misunderstood me slightly. When I said that the serious attacks started on 26 July, I was by no means implying that on 26 July we had a serious air raid. It was serious, as I said, because the bomb fell on the camp, but I retain this date because it marks the beginning of the raids altogether. As far as the actual air raids were concerned, we had some on 2 and 3 of August, towards eleven o'clock in the morning. We had another one on the 15th, one on the 28th of August, and then about every fortnight. I remember that they were increasing, and on the 25th of December we had a night air raid of thirty-seven minutes, and on the 1st of January - I was also still in the camp - we had another one of twenty-seven minutes.

Q Witness, you did not answer my question. Would you please answer it very clearly? On 26 July there was an air raid on Ludwigshafen involving one airplane?

A It is correct that on 26 July 1944, at eleven PM, exactly one plane and one plane only, which had been hit by the ack-ack guns, dropped

its bomb on our camp and caused eighty-one killed in our camp.

Q Witness, when were you sent to Mannheim from Ludwigshafen because of your illness?

A I was never transferred to Mannheim. You must have misunderstood that. I said Eppenheim.

Q Eppenheim?

A Yes, the hospital at Eppenheim.

Q When were you brought to Eppenheim from Ludwigshafen?

A I couldn't tell you with certainty the exact date, but I would say towards the end of February or the beginning of March. After all, that's already two years back.

Q And what was the reason for your transfer into the hospital?

A It was hunger edema. It's because of lack of food and it is a very wellknown disease.

Q Isn't it true that from December 1944 until your transfer to the hospital, you worked in town because that gave you an opportunity to get additional food?

A That is quite correct, but it wasn't enough.

Q Who was the physician who sent you to the hospital?

A It was a French doctor. I don't know his name. He was a prisoner of war too, and he committed us to the hospital after we had passed a medical examination of a German doctor who recognized that we had hunger edema.

Q Do you still remember the name of this French doctor?

A Unfortunately, not at all. He was a naval doctor, though. I know that.

Q Witness, do you still remember the number of the camp in which you were housed?

A Yes, it was 1000 B.

Q That was the number of the Wehrmacht, was it?

A Yes, that was still the number given by the armed forces

command, but it was a civilian camp which had been transformed for our
use.

Q How many prisoners of war approximately were there in that
camp?

A I would say that we were approximately 1,000 to 1,200 Frenchmen,
some 1,000 Poles and then, later on, the Italians arrived. We had
about 1,000 Italians too, and 300 to 400 Russians. I would say that we
were about 3,000 to 4,000 altogether.

Q. Three to four hundred Russians? Did I understand you correctly?

A. Four hundred would have been the maximum, but I am rather inclined to think that there were only three hundred.

Q. Were they Russian prisoners of war?

A. Yes, of course.

Q. Witness, in your affidavit you state that you were sent in a punishment detail to Ludwigshafen. Would you please explain this expression, "punishment detail"?

A. A punitive command, a Strafkommando, in general, was a detachment to which one was transferred for having committed a violation such as, for instance, trying to escape. It was a detachment where very hard work was done, harder than in other detachments. That is all I can say.

Q. Did all prisoners of war of your camp belong to this disciplinary or punitive command?

A. Basically speaking, yes. The whole detachment was a punitive detachment.

Q. In other words, I am correct in assuming that it was not a normal prisoner-of-war camp but it was a punitive prisoner-of-war camp?

A. Well, you might say it was disciplinary or a punitive detachment for all the prisoners of war, but still there is a certain margin, even if it was a punitive detachment. You see, I consider that if we are maltreated by the soldiers who are our guards, that is all right, but if those who make us work start to maltreat us, I think that goes a little beyond the limit.

Q. Witness, everyone who had been a prisoner of war, and many of us here were prisoners of war, knows the distinction between a normal prisoner-of-war camp and a disciplinary prisoner-of-war camp. Answer my question clearly. Was it a normal prisoner-of-war camp or was it a disciplinary camp?

A. When I was caught trying to escape, I was told that I would be sent to the disciplinary camp, to a punitive camp, to the Strafkommando at Ludwigshafen. However, from what I saw when I got there, I am inclined

to think that it was not really a punitive command but that it was a normal camp. It is a very difficult question for me to settle.

Q. Witness, perhaps I may assist you. Did you consider it to be a punishment to become a prisoner of war, and is that why you chose the expression "punitive detachment"?

A. I did not consider it as a punitive command. I didn't say that. When I was sent down there, I was told, "You are being sent to the disciplinary command, to the Strafkommando." Now that is all I can say, and that is all I will say with regard to that. It is not for me, and I am in no position to say whether it really was a punitive command or not. You, the Germans, will be able to tell me that.

Q. I can state then that you cannot uphold this expression, "punitive command" or "disciplinary camp" in your affidavit without limitations?

A. In my affidavit I have used only and alone the terms used by those who sent me to that camp, namely, I was told, "You are going to be sent to a punitive command," and all I can say is that it was extremely hard as far as work was concerned. In that respect it was punishment.

Q. There was the camp situated in relation to the plant? I am referring to the camp in which you were housed.

A. The camp was about two hundred yards away from the Rhine, and I would say it was about twenty yards from the walls of the factory. I think it was at Oppau, but again you must be in a better position than I to tell me that, but I know that there was a bridge of the Autobahn passing the Rhine which had been destroyed near there.

Q. Witness, I think I can help you. As a former non-commissioned officer, you will not have any difficulty in reading maps.

DR. HEINZELER: For that reason I ask the permission of the Tribunal to put to the witness a map of the former plant, Ludwigshafen-Oppau.

THE PRESIDENT: If Counsel will have the map marked as an exhibit for his client, he may pass it to the witness.

DR. HEINZELER: This map will become Exhibit Wurster No. 1 for purposes of identification.

BY DR. HEINZELER:

Q. For your orientation let me point out to you that at the bottom of the map you find the river Rhine.

A. Thank you.

Q. On the lower right corner of the map, about fifteen centimeters from the bottom edge and about twenty centimeters from the right edge of the map, you will find a square. Does that represent the camp in which you were housed?

A. Yes, that is correct. That was camp 1000-B.

Q. Where did you work in the factory?

A. In the factory we worked one day here and one day there. We worked coal one day and the next day we would be called upon to work in the electrical department. Then we would work at the construction of a hall. They just called for us wherever they needed us.

Q. Were you never assigned to a special department for any length of time?

A. Yes, I worked in the electrical department for about two months.

Q. Who was your superior there?

A. I am afraid my memory is not up to recollecting all these names after two and a half years. I am sorry. I have forgotten them all.

Q. Was it foreman Schaffhaeuser?

A. No, I don't think so. He was somebody who had no whiskers and a square face a round face. That's all I know.

Q. Can you point on the map where this electrical department was situated?

A. It was somewhere in the corner of the factory. Wait a minute. It must have been at the top in the center of the chart, about here. I don't know the exact location, but in this part. Could I ask you whether

these were the gasoline containers?

Q. There were very many gasoline containers in the factory, but I can assist you, witness.

THE PRESIDENT: Just a moment, please. Will Counsel for the defendant get to a microphone so that we can say something to him about this examination? Counsel, it will not help the record to have the witness point out on this map the things about which you ask him. In order that the record may show what the witness is testifying about, his answer should be descriptive, by stating what he is talking about so that the transcript will disclose his testimony rather than his gestures.

DR. HEINZELER: I shall put a specific question to the witness, Mr. President.

BY DR. HEINZELER:

Q. Was your place of work in building number 72, which bears this number on the map? You will find this number approximately twenty centimeters underneath the place where you find 1 to 5000.

A. I have to say that if I had to go there today, I certainly would find my way, but you know it is something quite different to find a little spot there on a big blueprint like that. I think that is rather impossible. I can't say it with certainty.

Q. Witness, you said that it was approximately there. You said that was approximately the place where your department was.

A. Yes. Yes. The approximate direction is correct.

Q. Witness, then let me ask you --

THE PRESIDENT: Counsel, just a moment, please. Can Counsel for the defendant indicate to the Tribunal how long he thinks the cross-examination will continue?

DR. HEINZELER: Mr. President, I think the examination will take some more time. I don't think that I can finish before twelve-thirty in view of the importance of this affidavit.

THE PRESIDENT: Then under the circumstances the Tribunal will rise

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for lunch.

(The Tribunal recessed until 1330 hours.)

AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Just a moment, please, before Counsel for the Defense resumes the cross examination.

The Tribunal would remind Counsel that on November 4th, as I am sure you will all recall, the Tribunal entered an order providing for a commissioner and naming Dr. John H. E. Fried as a commissioner. It will also be recalled that one of Counsel for the Defense made an objection to Dr. Fried on the ground that he was not an impartial person, or rather specifically that he had been associated with the Prosecution. There has come into the hands of the Tribunal a letter from Dr. Fried in which he reviews his entire connection with the Military Tribunals. We felt in fairness to him as well as to the Tribunal that we ought to make this information available to Counsel, and the Tribunal will now hand to the Secretary the original letter which may be seen and examined by Counsel for the Defense and the Prosecution at your convenience. If the Counsel for the Defense wish a translation we shall arrange to have it translated for you.

Counsel for the Defense may resume the cross examination of the witness.

MR. VAN STRAET: Mr. President, may I say just one word? In reference to the chart which has been used by Defense Counsel, I am at this time not interposing any objection to the use of this chart, but I think that there should be some showing made for the record as to its origin and also as to whether or not there were any changes in the plant layout of Ludwigshafen from the date of the chart, which I believe is January 1, 1944, up through the time in question which goes through until December, 1944.

THE PRESIDENT: It is perhaps sufficient to say now that the chart has not been offered in evidence but is merely a memorandum that is before the witness to refresh the recollection of the witness on cross

MR. SPEECHER: Your Honor, the error came about because we did not attach a new affidavit by Struss which makes certain corrections to this column. The document is already before Your Honors, but neither Dr. Dix nor I can at the moment give you the exhibit number or the MI number.

THE PRESIDENT: So the exhibit, as we understand it then, is in evidence subject to a stipulated correction with reference to the left-hand column? Is that a correct statement?

MR. SPEECHER: Mr. President, I would put it slightly different. The actual exhibit which is in evidence has been corrected but this copy of the exhibit in this particular document book has not been conformed according to the new affidavit.

THE PRESIDENT: I think the Tribunal understands now. You may proceed.

DR. DIX (Counsel for Defendant Schneider): I should like to remark that this correction was offered, together with an affidavit of Dr. Struss, as Exhibit 847, on the 9th of October.

DR. HEINZELER (Counsel for Defendant Wurster): Your Honors, in connection with this chart, I should like to point out that Dr. Struss, as far as the position of Dr. Wurster is concerned, has made a supplementary affidavit, which is Exhibit 392 and has already been offered to the Tribunal. This exhibit is in Book 15, page 125 in the English and page 143 in the German. In his statement, Exhibit 392, Dr. Struss remarks that the chart was prepared from a purely technical point of view, and he corrects the impression arising from this technical chart as far as the responsibility of Dr. Wurster is concerned. He says in his correction that Dr. Wurster was merely in charge of the plant at Ludwigshafen and Oppau—but not for all the plants which are listed under his name on the chart.

THE PRESIDENT: Is that observation concurred in by the Prosecution?

MR. SPEECHER: Yes, Mr. President; and I would like to personally

THE PRESIDENT: Counsel, the Tribunal will hand back to you the map which you gave us.

Is there any further cross-examination of this witness desired?

It does not appear so.

Has the Prosecution any re-direct examination.

MR. VAN STREET: There is no re-direct, Mr. President.

THE PRESIDENT: Then the witness is excused, and the Marshal may escort him from the box.

Is the Prosecution ready to call its next witness?

MR. DUBOIS: We have a number of witnesses expected in today, Your Honor, and we had planned this afternoon to go on with Books 72, 73 and 74. I think myself, if you have no objection, we would prefer to hold the presentation of those documents so that they can be presented all at once, and recess for the day, and go on with the witnesses the first thing in the morning in connection---

THE PRESIDENT: Have you a witness that you could use for half an hour? We could make a good start on that, if you have one available?

MR. DUBOIS: We have a witness who just got in from England and he is rather tired. That is William Allen, whom we were going to announce for tomorrow, and we had not planned to put him on this afternoon. We can go on with documents for half an hour....

THE PRESIDENT: Well, a half an hour is thirty minutes.

MR. DUBOIS: We will do that. Mr. Van Street tells me that he feels the witness will not be able to go on.

I would like to announce these witnesses while I am on the stand. These possible witnesses for tomorrow: William Allen, Jean van Mol, Walter Stothfang, Jan Dvorak, Josef Hoyerck, and Carl Mueller.

THE PRESIDENT: The Tribunal cannot pass the opportunity

of observing to counsel that without in any manner beginning to criticize the examination and the cross-examination of the witness who just left the stand, we have now had the experience of a cross-examination of a witness whose affidavit was about one and one quarter page in length, which cross-examination started at eleven-fifteen this morning and ended at four o'clock this afternoon with, of course, our usual intermissions out. That illustrates the problem which the Tribunal had in mind when it entered the order appointing a commissioner to hear certain evidence in this case.

Which book will you use, Mr. Prosecutor?

MR. DUHOIS: Book 72.

THE PRESIDENT: Thank you.

MR. DUHOIS: Mr. Minskoff will present.

MR. MINSKOFF: May it please the Court, this opens another phase of the Prosecution's case, that phase which deals with the activities of I.G. Farben at Auschwitz. The Prosecution asks leave of the Court to introduce III-C of the Indictment prior to III-B because of the close relationship that the material bears to the Slave Labor part of III, which has been before Your Honors.

Prosecution takes the position that enslavement, apart from and independent of conditions of servitude, constitutes a grave offense against humanity; and whereas here foreign nationals as well as Germans were involved, constitutes War Crimes as well. The conditions of servitude are germane only to the issue of mitigation or aggravation of the principal crime. On the otherhand, where the treatment of the enslaved persons is so bad as to result in their destruction, the crime transcends enslavement and the perpetrators become answerable for the taking of human life. The motto "Production is any Cost" which characterized

Farben's general activities in the general recruitment of laborers for its plants, took on a grimmer and more callous significance as Farben moved its production tempo into high gear at I.G. Auschwitz.

Slave labor, the depriving of human beings of freedom of movement, freedom of action, becomes a meaningless concept in an environment where human life, human dignity, decency and morality were completely, deliberately, and coldly subordinated to the goal of production efficiency. The lack of familiar analogy makes it almost impossible to grasp the enormity of the scope and the nature of the crimes committed by the defendants. In order to understand the gravity of the crimes here charged against the responsible officials of I.G. Farben; in order to appreciate the incredible inhumanity of Farben's ruthless drive for production and profit; in order to grasp Farben's unbelievable--

THE PRESIDENT: Counsel, yield to the Defense.

DR. VON METZLER (Counsel for defendant Haefliger):
I would like to raise an objection, with your Honors' permission. I think this is mere argument and, therefore, it is not proper to refer to all these points at this time. I make an objection.

THE PRESIDENT: Objection is sustained.

MR. MINSKOFF: The nature and the details of the crimes alleged in Count III-C have been set forth rather fully in the Indictment. Because of the nature of those allegations it was thought that it might be helpful to include portions of the Indictment at appropriate places in the document book preceding the documents which support the allegations made. At the beginning of Document Book 72, the appropriate portion of the Indictment refers to the seeking of a site for the fourth Buna factory, the

finding of this site at Auschwitz, and the knowledge that the site chosen was the site of a concentration camp, and the availability of slave labor at that concentration camp.

The Prosecution offers in evidence Document NI--

DR. GATHER (Counsel for Defendant Ambros): I should also like to object to the statements made by the Prosecution up to this time. This obviously was pure argumentation and not submission of evidence.

THE PRESIDENT: Does your associate-counsel wish to be heard?

DR. VON METZLER: With Your Honors' permission, I should like to raise an objection against a certain sentence of the introduction to the Index of the Document Book 72, reading as follows: "In recommend said locations, the defendant Ambros called specific attention to the available labor supply from the concentration camp in that area."

In viewing this sentence in connection with the following sentence, "The Vorstand approved the recommendations and authorized the construction of a Buna plant at Auschwitz;" this gives the impression that the only reason--at least the chief reason--for recommending the area of Auschwitz as a site for the prospective Buna plant was that fact, that the available labor supply from the concentration camp Auschwitz was at hand and that the Vorstand accepted this point, and, therefore, decided to build the new Buna plant in the area of Auschwitz.

Now, as far as I can see from the documents presented in this book, there is no document which is supporting this book, there is no document which is supporting this allegation of the Prosecutions. To the contrary, if I may draw respectfully Your Honors' attention to the affidavit of Ambros--this is page 48 and 49 of the English book, page

48, Ambros states: "Fritz Ter Meer and I advised TEA of this assignment: namely, to build the fourth Buna plant, and the TEA and all the Vorstand respectively decided to build the Buna plant and a methanol plant..."

THE PRESIDENT: If counsel will pardon an interruption, we can answer both matters, that have just been suggested, very briefly. The Tribunal sustained the objection to the statement of the Prosecution upon the theory that it was argumentative and not a statement of facts which the Prosecution expects to establish. In so far as a part of that statement came in without an objection, we can now state on the record that the Tribunal will consider that as argumentative and it will not be considered in the determination of the merits of the case. As to the second proposition, the Tribunal does not regard the statement at the top of the Index to this document book as bearing any proper relationship to this case, from a standpoint of evidence.

We note that the documents that are indexed are to be offered in support of Count III-C of the Indictment. That is sufficient for our purpose. We shall strike out the matter to which counsel referred.

Counsel for the Prosecution may proceed.

MR. MINSKOFF: May it please the Court, I would like to merely mention that we stated a moment ago, the only purpose for including portions of the --

THE PRESIDENT: Counsel, please, we have ruled and there is nothing to discuss. Proceed with your next step and conserve the time as best we can.

MR. MINSKOFF: The Prosecution offers the following documents:

NI-11181 as Prosecution's Exhibit 1408.

THE PRESIDENT: 11181 to you mean?

MR. MINSKOFF: NI-11181.

THE PRESIDENT: Your Exhibit number?

MR. MINSKOFF: 1408.

THE PRESIDENT: Thank you.

MR. MINSKOFF: NI-11110, as Prosecution's Exhibit 1409;

NI-11783, as Prosecution's Exhibit 1410;

NI-11784, as Prosecution's Exhibit 1411;

NI-11785, as Prosecution's Exhibit 1412;

NI-11112, as Prosecution's Exhibit 1413.

DR. KRAUSS, (counsel for the defendants Professor Lautenschlaeger and Prof. Jaehne): Your Honors, I raise an objection against this manner of presentation of documents. It is impossible for me to even approximately follow this presentation as to its contents, and to gain any clarification whether and how I can object to the documents in question.

THE PRESIDENT: Counsel for the defense has no doubt had this document book for the length of time required by the rules of the Tribunal, and presumably is familiar with the contents of the document, and the index, not only that, but the Tribunal has indulged in a very liberal policy of allowing objections to be made within

a reasonable time after the document has been introduced in evidence.

Under the circumstances, we do not think that there is anything wrong with the procedure of the Prosecution. We may say in passing that we understand, on the contrary, that this is consistent with the uniform policy of one Tribunal that is operating in this building. I should like to say one thing further to counsel for the Prosecution.

Is it your first appearance and the President has in mind, in the presentation of documents of your associates here. Please do not understand that when we sustained an objection to the statement that you were making, that we were refusing to hear you make a summary of your documents. We sustained the objection upon the theory that what you were saying was argumentative rather than a statement of what the document established, and you may use your own judgment about how you proceed. If you care to you can summarize the documents as you present them, or you may summarize them in a group, or you may submit them as you are now submitting them.

MR. MINSKOFF: Thank you. I understand that.

I believe that the last document was NI-11112, as Prosecution's Exhibit 1413; NI-11113, is offered as Prosecution's Exhibit 1414;

NI-11782, is offered as Prosecution's Exhibit 1415.

The Prosecution asks the Tribunal to note particularly that in this group of documents which consists of meetings and inspection trips related to the finding of the site Auschwitz, the fact that certain considerations were present. The Court's attention is called particularly to Prosecution's Exhibit 1410, on pages 11 and 12 of the English and 17 of the German, where in the letter to the

defendant, Ambros, it is mentioned that:

"At present, the locality of Auschwitz is outside the police jurisdiction of the German Reich area. It appears that it is at present still being used as a reservoir of Jewish manpower. Since it may be expected that the greater part of the inhabitants will be evacuated when construction begins in view of the population policy, there would be suitable quarters to accommodate building workers and later on, factory staff".

DR. GATHER, counsel for the defendant Ambros:

I object to the interpretation of the excerpt which was just quoted from document NI-11783, Exhibit 1410. The Prosecution designated this excerpt as a letter. Neither has this become evident from the document, nor is it identifiable in its context as a letter. We are here concerned with excerpts from the minutes of the Conference.

THE PRESIDENT: If counsel please, the Tribunal cannot use its time to censor the statements of counsel, whether it be for the Prosecution or for the Defense, as to what they deem a written document to be or to mean.

After all, in the final analysis, the document will speak for itself. What it is will appear from the order, from such further evidence as may be produced here, as to what it is or what it is thought to be. If we had to referee controversies that would arise between counsel for the two sides as to what a document is or means, there would be no limit whatsoever on the time that would be required because we dare say each issue of fact would be controverted.

The objection is overruled.

Counsel for the Defense, were you directing your remarks to what counsel said, or to the interpretation.

Perhaps I misunderstood you. My associate says he thinks you were speaking of the index statement.

DR. GATHER: No, Your Honor, with my remark I referred to the interpretation of this document as being a letter. I thought that it was obviously an error on the part of the member of the Prosecution.

THE PRESIDENT: The index appears to be the same. We shall note opposite the index a question mark which will reserve to the defense the question that it does not agree that the index properly summarizes the document. That will afford you the protection to which you are entitled.

DR. GATHER: Thank you.

MR. MINSKOFF: It might be helpful to note that there is a double reference in the index saying, "Letter enclosing extract". That might have been confusing.

THE PRESIDENT: Very well. That is not evidence anyway. It won't hurt him any.

MR. MINSKOFF: The Court's attention is also respectfully called to the Prosecution's Exhibit 1411, page 21, pardon me, 14 of the English, and 21-22 of the German, where in the minutes of a discussion between the defendant Ambros and others, the following appears:

"The inhabitants of Auschwitz consist of 2000 Germans, 4000 Jews and 7535 Poles. The Germans are peasants. The Jews and Poles, if industry is established here, will be turned out, so that the town will then be available for the staff of the factory. For this reason it will not, at least at first, be necessary to build many dwellings, because an adaptation of the existing houses, at least to a certain extent, will probably be possible. A concentration camp will be built in the immediate neighborhood of Auschwitz for the Jews and the Poles."

The prosecution also asks the Court to note that in

Document 1412,—

THE PRESIDENT: This would be a good place to stop.
Are there any necessary announcements before we adjourn
for the day?

Has the Prosecution anything?

MR. DUBOIS: We will have these witnesses, and if for
some reason they do not get here, we will go on with docu-
ments.

THE PRESIDENT: The Tribunal will rise until nine-
thirty tomorrow morning.

(Court in recess until 9:30 November 8, 1947.)

Official Transcript of the Aermical Military Tribunal Number 6 in the matter of the United States of America against Karl Krauch, et al, defendants, sitting at Nurnberg, Germany, on 6 November 1947, 0930, Justice Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal No.

6

Military Tribunal 6 is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, you may report on the presence of the defendants.

THE MARSHAL: May it please Your Honors, all the defendants are present in the courtroom with the exception of Ilgner and Kugler.

THE PRESIDENT: The defendants Ilgner and Kugler will be excused from attendance at today's session by order of the Tribunal, on account of reasons and circumstances which the Tribunal deems sufficient.

Has the Prosecution any preliminary announcements?

MR. SPRECKER: Mr. President, we plan to continue today with the presentation of documents, but sometime in the afternoon we shall possible call some witnesses, if it appears to be in good order at that time.

THE PRESIDENT: Thank you. Anything to be said by the Defense before we start?

Prosecution may proceed with the introduction of its evidence.

MR. WINSKOFF: May it please the Court, referring to Prosecution Exhibit 1412, the Court's attention is called to the fact that in this document, as in the previous exhibit, it is indicated that one of the considerations for choosing Auschwitz as a site for the Buna plant is the existence of the concentration camp Auschwitz.

On page 19 of the English and 33 and 34 of the German it is stated that: "West and southwest of Auschwitz a terrain of approximately ten kilometers is to be used for a concentration camp settlement. The concentration camp already existing with approximately 7,000 prisoners is to be expanded. Employment of prisoners for the

building project is possible after negotiations with the Reichsfuehrer-SS."

The document is a memorandum for the files, and the defendant Ambros heads the distribution list. With reference—

DR. SEIDL (Counsel for the defendant Duerrfeld): Your Honors, in view of the fact that the Prosecution, in connection with Exhibit 1412, has just made statements which, according to their nature, are argumentative, I consider it to be my duty to draw the attention of the Tribunal to the fact that a correct representation of this document would require the Prosecution to name the ten points which are enumerated previously.—

THE PRESIDENT: Counsel...

DR. SEIDL: --and according to which--

THE PRESIDENT: Counsel, we have indicated before: you are not bound by statements that the Prosecution makes when it offers a document in evidence. The statements of counsel are what counsel conceives the purpose of the document to be, which is always weighed in the light of what the document is.

Are you directing your remarks at the index or the verbal remarks of counsel?

DR. SEIDL: My remarks refer to the interpretation of this document by the Prosecution and they do not refer to the index.

THE PRESIDENT: Then your motion is overruled. That is no part of the document or the evidence.

MR. MINSKOFF: With reference to the Prosecution's Exhibit 1413 and 1414, it is merely noted that the defendants Ambros, Krauch and Ter Meer were all in on the initial planning of the Buna factory at L. A. Auschwitz.

Prosecution now offers Document No. NI-4182, as Prosecution Exhibit 1416. This is an affidavit of the defendant Bueteftisch. With leave of the Court, the Prosecution would like to call special attention to particular excerpts of the affidavit. In paragraph 2 it is

stated that: "In the winter of 1940-41, Otto Ambros, together with
Krauch's office and the Vorstand of I. G. Farben, suggested Auschwitz
as a suitable site because the composition of the soil, the availabil-
ity of coal, water and limestone as well as, according to a statement
of the Labor Office, the supply of labor, for example Poles and in-
mates of the concentration camp Auschwitz, favored the construction of
the Buna plant and the subsequent production respectively. In 1941
a meeting of the Vorstand approved the money for the construction pro-
ject of the new I. G. Auschwitz."

In paragraph 5 it is stated that: "TEA and the Vorstand did not object against the use of concentration camp inmates at I.G. Auschwitz."

The Prosecution now offers Document NI-1240 as its Exhibit 1417. This is an order issued by Goering to Himmler, dated 18 February '41, and marked "copy for Krauch." The Prosecution calls particular attention to the fact that all the three measures directed by the order have been mentioned in the documents just introduced by the Prosecution relating to the selection of the I.G. Auschwitz site. The Goering order, which appears on page 39 of the English and 66 of the German, includes the following measures, that: "1. The Jews at Auschwitz and in the surrounding area must be quickly expelled especially for the purpose of clearing their lodgings in order to billet the construction workers of the Buna plant."

"2. Preliminary permission for the Poles in Auschwitz and the surrounding area who may be used as construction workers, to stay in their present lodgings until the termination of the construction works."

"3. Availability of the largest possible number of skilled and unskilled construction workers from the adjoining concentration camp for the construction of the Buna plant."

May it please the Court, the Prosecution would like to note that the documents heretofore submitted with reference to the construction site all predate this Goering order.

The Prosecution now offers Document NI-7604, as its Exhibit 1418, and asks the Court to note paragraph 6 of the affidavit of the document which appears on page 42 of the English and page 70 of the German.

In paragraph 7, which appears on page 71 of the German, defendant Schneider declares that: "Neither the Technical Committee nor the Vorstand objected to the fact that the future Buna plant was being erected with the help of concentration camp prisoners."

In paragraph 11, which appears on page 43 of the English and 72 of the German, the Court's attention is called to the following contents. "In employing concentration camp prisoners I was aware that these people of varying social status were held in concentration camps for political

and racial reasons. This fact was known to the Vorstand of I.G."

The Prosecution offers as its next document, Document NI-9542, which is an affidavit of the defendant Ambros, as its Exhibit No. 1419. This is a rather long affidavit, and the Prosecution would like to call the Court's attention to just a few portions of the affidavit. The Court is requested to note paragraph 10, which appears on page 50 of the English and 85 of the German, where Ambros states that in his report to the "TEA he discussed credits, soil condition, labor allocation, etc., with I.G. Auschwitz." And he states specifically that mention was made of the fact that concentration camp inmates "are being used for the construction of the I.G. Auschwitz."

The Court's attention is also called to paragraph 12, which appears on page 51 of the English and 85-86 of the German. This paragraph describes what the defendant Ambros saw when he visited Auschwitz. In paragraph 23, which appears on page 56 of the English and 96 of the German, the defendant Ambros states: "The set-up of the concentration camp is something horrible. It is a torture for the inmates. One always felt hesitant, so to say, to speak about it. The other Vorstand members and I knew that apart from criminals one also held there people from all walks of life, people who were persecuted for political, racial or religious reasons."

Prosecution offers as its Exhibit 1420 NI-4033, which is an affidavit of the defendant Krauch. At this time the Prosecution merely calls attention to paragraph 10 of the affidavit, which appears on page 66 of the English and 106 of the German.

The defendant Krauch states; I quote: "The Executive Board (the Vorstand) of I.G. Farben, especially the members of the Executive Board, Schmitz, Ter Meer, Ambros and Buetefisch, were informed of the employment of concentration camp inmates with the I.G. Buna plant Auschwitz, and did not protest."

Prosecution offers NI-11114 as its Exhibit 1421 without comment.

The next document offered in evidence is NI-11086, as Prosecution

Exhibit 1422. This is introduced, your Honors, for the purpose of showing the implementation of the Goering order, Prosecution Exhibit 1417, as carried out by Himmler. The Prosecution calls special attention to the fact that the letter proceeds from the office of Kreuch, is designated as "top secret" and is marked for the attention of defendant Ambros, with copies to defendants Ter Meer, Buetafisch and Duerrfeld.

The Prosecution offers without comment NI-4184 of the defendant Duerrfeld as its Exhibit 1423. Pending the decision of this Tribunal with respect to the admissibility of affidavits of deceased affiants, the Prosecution asks the Court to mark Document NI-034 as Prosecution Exhibit 1424 for identification.

MR. SPRECHER: Mr. President, this affidavit is the Hoes affidavit which came up previously in one of the cases which the Prosecution cited as a precedent to you the other day, and this document has already been admitted before one of the other Tribunals.

THE PRESIDENT: Do you desire that it carry a number for the purposes of this part of your presentation of 1424 if it is admitted in evidence, or should --

MR. SPRECHER: Mr. President, I meant to indicate it had been received in evidence in one of the other cases which I cited when I was making the argument the other morning.

THE PRESIDENT: I understand.

DR. SEIDL (Counsel for the defendant Duerrfeld): Your Honor, I object to the submission of the document NI-034. It is correct; this affidavit has already been admitted in another trial; that was in Case IV. But there we have a case where the defense, at the time of introduction did not raise any objection as to its admissibility. Therefore, the problem never came up in Case IV. I not only, however, object to the admission of the affidavit because the affiant is deceased -- and I know that a basic decision has already been made by the Tribunal regarding that point but it is my opinion that the question of cross-examination of a deceased affiant can be important if other circumstances come up which tend to speak

against the admissibility to raise this objection to the Tribunal at this time.

THE PRESIDENT: No, Counsel; sorry, but we cannot do that. The document has not even been offered to the Tribunal. The Prosecution, in order to keep track of where the document is and where it would fit into the proof, if it is offered and admitted, has simply given it a number which is the property of the Prosecution and is not even before the Tribunal. The Prosecution counsel's remarks with reference to it having been admitted in evidence was simply calling attention to the Court, that it was one of the documents involved in another proceeding, which they mentioned in the argument as to the admissibility of documents of deceased persons.

The Tribunal is sure that the Prosecution did not undertake to suggest that because some other Tribunal had admitted it that it was before this Tribunal. Now, there is nothing now before the Tribunal. It may be that sometime the Prosecution will call up this document, which is only marked for its own identification, and offer it. If counsel for the Prosecution does so, you may then make whatever objection you have to make.

In the meantime, perhaps the Tribunal will have ruled in principle as to the admissibility of documents of deceased affiants.

DR. SEIDL: Let me only say that I obviously misunderstood Mr. Sprecher's remarks. I understood him to say that he would offer this document C24 in evidence at this time.

Now, of course, I have to withdraw my objection.

THE PRESIDENT: Very well.

MR. MINSKOFF: The Prosecution now offers Document NI-11827 as its Exhibit 1425. This document contains the minutes of a TEA meeting of 19 March 41 at which the following defendants were present: Ter Meer, Schneider, Buotofisch, Ambros, Wurster, Lautenschlaeger, Joeline, Hosrlin, Kuehn, Ruergin, Gejewski and von Knieriem.

On page 91 of the English and 147 of the German, the defendant Ambros reports on Auschwitz, and on page 91 of the English and 147 of the German the TEA appropriates 19,500,000 Reichsmark for Auschwitz.

The next document, if it please the Court, is NI-31115 and is offered as Prosecution Exhibit 1426. This document contains the minutes of the first construction conference of I.G. Auschwitz.

At the outset, the Prosecution respectfully refers the Court's attention to its Exhibit 1418, the affidavit of the defendant Schneider, where, on page 42 of the English and 70 of the German, it is stated that copies of the minutes of these construction conferences went to the defendants Ambros, Sustofisch, Ter Meer and Schmitz, in addition to himself.

(MR. MINSKOFF)

With reference to the present document, 1426, the Court's attention is directed particularly to pages 106 and 197 of the English, 175 of the German where the defendant, Luerrfeld reports on the discussion with Wolff of the SS. The report states (1) that it has been promised that 700 prisoners of the Auschwitz Concentration Camp will be assigned to the building site of labor, and (2) that a promise has been received that the head office of the SS will use their influence to effect an exchange within the Concentration Camps of the SS with the object of transferring skilled workers from the Reich to Auschwitz.

The Prosecution offers Document HQ NI 10854 as its Exhibit 1427. This document is a letter from the SS main office to the Commandant of the Concentration Camps Buchenwald and Auschwitz, and is introduced at this point to indicate that the arrangements referred to in the previous documents have actually been carried out, and at the Concentration Camp inmates were transferred from another Concentration Camp and brought to Auschwitz to work for I. G. Farben.

This letter appears on page 110 of the English, and 180-81 of the German.

The Prosecution offers as its Exhibit 1428, Document NI 11116. The Court's attention is called only to page 113 of the English, and 185 of the German, where the defendant Luerrfeld reports on his discussion with the camp commander Hoess. Luerrfeld reports, and I quote:

"Hoess is very willing to support the construction management to the best of his ability."

THE PRESIDENT: That completes the introduction of the documents in Book 72 of the Prosecution?

MR. MINSKOFF: That's right.

THE PRESIDENT: Now if the Prosecution pleases, are you going next to Book 73?

MR. MINSKOFF: That's right, Your Honor.

THE PRESIDENT: May we not anticipate trouble for the moment and eliminate it. Does the prosecution have any objection to the striking out of the first part of this document that precedes the description of the documents?

MR. MINSKOFF: Referring to the quotation?

THE PRESIDENT: Is that purely a quotation from the indictment?

MR. MINSKOFF: That is all that it is.

THE PRESIDENT: That's all?

MR. MINSKOFF: That's all.

THE PRESIDENT: There is no use of striking that out, as far as that is concerned, that cannot cause anybody any trouble. On the Prosecution's statement that it is a quotation from the indictment, you may proceed.

MR. MINSKOFF: Thank you, Your Honor.

The first document in this book, No. 73, is a chart, NI 7968, and it is offered as Prosecution's Exhibit 1429. The chart is self-explanatory. It might be noted that the wall chart was prepared by the technicians in this building for the Prosecution based upon the chart which is now in evidence. There are differences in the sense that there are colors on the wall chart to make the certain portions stand out; also there are English legends on the wall chart which do not appear in the documents.

I might add also that the designation of the Concentration Camp Auschwitz does not appear in the document book, and it was just added to the wall chart for what assistance it might be when the witness points to the various portions of the chart.

DR. SEIDL: Counsel for the defendant Duerrfeld:

Your Honor, I do not object to the admission of this chart as a piece of evidence. I merely ask you to give me an opportunity to make a short remark as to its designation.

The Prosecution designated Camp V, as "The Concentration Camp".

It is the opinion of the Defense that the designation, "Concentration Camp" cannot be justified. It should read, "Work camp of the Concentration Camp Auschwitz". The Defense will bring up evidence to show that this Camp ⁴ which on the chart is designated, "Concentration Camp Monowitz" in reality was only one labor camp of which there were 500 throughout Germany, and which were subordinated to 14 large concentration camps.

I should also like to make another remark. The chart is incorrect in so far as from the year 1942 on there was a main road which had a lot of traffic on it, between the plant itself and Camp 4, which was the main road leading from Auschwitz towards the east. This street was already in existence when the Camp V was founded in October 1942, and when the inmates moved in at the time, and I am referring to those who worked in the I. G. plant.

THE PRESIDENT: We will hear your associate counsel if he has anything to say before the Prosecution responds.

DR. GATHER: Counsel for the defendant Ambros:

I should like to draw the attention of the Tribunal to the fact that this exhibit which formed the basis for this chart on the wall, may be misleading inasmuch as we are here concerned with a confusion between projects and realities, and causing to arise therefrom the distortion and obscuring of details which are of paramount importance for the submission of evidence.

THE PRESIDENT: What verification of this map does the Prosecution suggest that justifies its admission in evidence?

MR. MINSKOFF: On the map itself, if the Court please, there is the certification of a Mr. Faust, who was the Chief Engineer at I. G. Auschwitz, a photostatic copy of which is now in evidence.

THE PRESIDENT: Very well.

MR. MINSKOFF: With respect to the points raised as to the designation of Camp 4 as Concentration Camp Monowitz, may I call the Tribunal's attention to the fact that the defendants themselves in the

affidavits now before Your Honors, and I refer to the Prosecution Exhibit 1416, an affidavit of the defendant Rustefisch I think, - at any rate the defendants themselves in two or three of the affidavits which are now before the Court, and have now been introduced in Book 7, themselves refer to Monowitz as, "Concentration Camp Monowitz".

THE PRESIDENT: The matter is not of very great significance, in view of the fact that the defendants are not bound by the designations that are put on a map by counsel which enable the court to visualize the exhibits. On the statement of the prosecution that there is some evidence that would warrant the designation of the Camp 5 as a concentration camp, the objection will be overruled. The Tribunal leaves it proper to say to counsel for the defense that you are not bound by the statement of the prosecution or the fact that there is some evidence that might justify that designation, and in your defense you may show what you think the proper designation is, and the question will be open in the minds of the Tribunal until we hear all of the evidence relating to the exhibit that we will conclude, if it becomes important for us to conclude what is the proper designation.

The objection will be overruled.

DR. CATHER: May I just draw your attention to another fact? The certification of this document by Dr. Faust merely says, and I quote: "The chart of the plant Auschwitz is a faithful projection of the original". This, however, does not say anything about the time that this chart was drawn up, nor is it recognizable whether the original would have become clearer through a number of colored symbols drawn in, which represent only projects.

THE PRESIDENT: The only importance of the circumstances of time is this. If the chart shows a condition that obtained at a time the Tribunal is unconcerned about, it would be pure surplussage; unless the chart relates to some period of time within the scope of this inquiry, it would just encumber and burden the record with something unimportant. On the other hand, the defendants will have an

adequate opportunity to point out whether or not the chart does relate to conditions as they existed at some period of time here under inquiry. If it does not, then it is worth nothing to us anyway. If it does, we shall consider it in the light of what all of the evidence may show as to the time when it was made.

We think this question can be ruled on by overruling the objection without in any way injuring any substantive right of any defendant. The objection is overruled.

DR. GATHER: Your Honors. I made these remarks in order to perhaps suggest that the defense might reach an agreement with the prosecution already now in order to make certain corrections on the chart. I think that for the purposes of cross examination of future witnesses, it be expedient to clear up certain facts, using this chart.

THE PRESIDENT: Counsel's objection was timely. The only point we wish to make is that unless there is some showing before we finish the evidence in this case, that this chart or map shows some condition as it existed at some time under the inquiry here, it would not be worth anything to us, and we will have to ignore it, and counsel for the Prosecution and the Defense can both take notice of that.

It is a simple matter to ascertain from some witness who knows the territory as to whether it does offer a representation of conditions as they existed at some time. If that is not done, nobody is going to be hurt, because it will be just that much paper in the record that the Tribunal cannot use.

You may proceed.

MR. HINSKOFF: The next two documents will be introduced to show the close cooperation between Farben and the SS, as the result of which I.G. Auschwitz was able to obtain the necessary concentration camp inmates in the construction of the Buna plant.

The Prosecution offers Document No. NI 11117 as its Exhibit 1430, and Document NI 11118 as Exhibit 1431. It may be particularly noted that on Page 5 of the English, and 10 of the German, Exhibit 1430, it is stated, and I quote:

"By order of the Reichsfuehrer-SS extensive assistance from the Auschwitz concentration camp had been promised for the building period. The camp commandant, Sturmbannfuehrer Hoess, had already made arrangements for the employment of his men."

In Exhibit 1431, at the official founding ceremony of I.G. Auschwitz it is stated by the defendant Ambros, at page 11 of the English and 23-24 of the German, that, and I quote:

"Dr. Eckell proved his worth in this connection, and, in addition our new friendship with the SS is proving very profitable.

"On the occasion of a dinner which the administrative authorities of the concentration camp gave in our honor, we further decided upon all measures connected with the use of the superb plant of the concentration camp for the benefit of the Buna works."

The next three documents, if it pleases the Court, are introduced to indicate the number of defendants to whose attention the construction of I.G. Auschwitz was called from time to time.

The Prosecution offers as its Exhibit 1432, NI 8078, as its Exhibit 1433; NI 10934 --

THE PRESIDENT: Counsel, you have skipped a number, I believe, 11826; is 1432, according to our memo at the bottom of your first page.

MR. WINSKOFF: I am sorry, Your Honor. That is correct, 11826, that would be 1432. 8078, that is 1433, and 10934, is 1434.

The Court's attention is directed to the first of the two TEA meetings, Document 1432, where funds were appropriated for I.G. Auschwitz and where there was present, defendants ter Meer; Schmitz, Schnieder, Boetefisch, Ambros, Wurster, Lautenschlaeger, Jaehne, Hoerlein, Kuehne, Buergin, Gajewski and von Knieriem.

THE PRESIDENT: Are we correct in assuming that the purpose of the Exhibits 1432 and 1434 is to show the appropriations and the presence of the defendants named in the index at the meetings?

MR. WINSKOFF: That is correct, Your Honor.

THE PRESIDENT: Then you may pass on to the next one. We understand these things.

MR. WINSKOFF: The prosecution offers Document NI 11127 as its Exhibit 1435. This document is the minutes of the 12th Construction Conference. At the present time the Prosecution wants to call attention only to that portion of the exhibit which appears on page 30 of the English, and 67 of the German, where it is stated: "Owing to existing conditions, the number of prisoners employed on this work could not be

increased. The erection of fences around the premises had been begun; its completion was, however, a prerequisite for the employment of additional prisoners".

The Prosecution offers Document No. 10936, as its Exhibit 1436, without comment.

Document VI 7288, is now offered as Prosecution's Exhibit -- pardon me. That is in evidence, Your Honor, That is United States of America Exhibit 569 in Book 29, page 57.

THE PRESIDENT: 569 is our exhibit number?

MR. MINSKOFF: That is right, Your Honor.

THE PRESIDENT: Counsel, the next several documents appear to be more or less cumulative and present rather simple facts. Are the contents of those documents not fairly stated by your index summary?

MR. MINSKOFF: Yes, Your Honor.

THE PRESIDENT: I think we can conserve some time here just by marking them. Until you get down to something that you think is of more importance that should be emphasized, let's just assign numbers for the next four or five.

MR. MINSKOFF: I contemplated that, Your Honor, just giving the document number to indicate their contents.

THE PRESIDENT: Very well..

The Prosecution offers NI-11129 as Prosecution Exhibit 1437. NI-10937 as Prosecution Exhibit 1438. It offers NI-10938 as Prosecution Exhibit 1439, and NI-11132 as Prosecution Exhibit 1440. With respect to Prosecution Exhibit 1440 the Courts' attention is called merely to the constant contact which is indicated by this in the several preceding documents between the I. G. administration at Auschwitz, the Concentration Camp Auschwitz, to show the knowledge of what was going on in that area.

The Prosecution offers Document NI-939 as its Exhibit 1441. On Prosecution Exhibit 1441 it was intended to state the NI number was 10939. Document 10940 is introduced as Prosecution Exhibit 1442.

Document 11135 is offered as Prosecution Exhibit 1443. With respect to 1443 the Prosecution directs the Courts' attention to page 100 of the English and page 189 of the German, where in a letter from the defendant Ambros to the defendant Krauch it is stated:

"In conclusion, let me assure you that we are doing everything to reach our goal, in spite of this encroachment. I have hardly known any building site during the past few years which has begun and carried out its work with such alacrity. Therefore, it is extremely important to us that you, my dear Professor, should include us -- in the same way as Bruex -- in one or other priority campaign, as soon as possible, so that not only these 1300 men are returned to us one day but also that our strength is increased by the addition of further workers."

That concludes the Book No. 73, your Honors, Book 74, Your Honors, is the next.

THE PRESIDENT: All the messenger got out books? Thank you.

DR. SEIDL: Dr. Seidl (counsel for the defendant Dr. Duerrfeld.) Your Honors, I should merely like to draw the attention of the Tribunal to the last exhibit which was offered by the Prosecution. I am referring to the Document 1443 which is the last document in Document Book 73. We

seen to have here an error in translation which rather distorts the sense of that document. It says in the last paragraph and I quote: "In conclusion, let me assure you that we are doing everything to reach our goal, in spite of this encroachment. I have hardly known any building site during the past few years which has begun and carried out its work with such elan." The defendant Dr. Labros has just told me that the word "drive" is not a correct translation. The word in German is "Schwung", "elan", and it may perhaps have brought up some difficulties. Perhaps the Prosecution and the Defense can come to an agreement as to the correct translation of that term.

THE PRESIDENT: I am not sure that we understand you, counsel. The word is translated "elan" in the English book.

DR. SEIDL: I think I can clear up this error, your Honor. The word "elan" is correct; in the index, however, the word "drive" has been used. I think that the word "drive" in the index should be stricken and the word "elan" substituted.

MR. SPRECHER: We will not concede that. Either word can be used and I think in the context either "drive" or "force" can be proper and, of course, you can refer to any dictionary and find the word.

THE COURT: Well, I don't think the Tribunal will waste any time in consulting a dictionary as to the fine distinction between the words "elan" and "drive". We have noted the correction in the index and the Prosecution may continue with its presentation.

MR. MINSKOFF: The first document in Book 74, your Honor, we offer in evidence is Document 11124 as Prosecution Exhibit 1444. This document, your Honors, as well as the next several documents may be grouped together and the Court's attention is just called to the simple purpose for their introduction. May I first introduce the remainder of Documents NI-11130, as Prosecution Exhibit 1445, NI-11131 as Prosecution Exhibit 1446, NI-11137 as Prosecution Exhibit 1447, and NI-11138 as Prosecution Exhibit 1448.

In Document 1444, your Honors, which are the minutes of the 9th Construction Conference, there appears on page 4 of the English and 9 of the German the caption "Camp Care and Supervision" under which it is stated, "Supervision of the camp is in our hands and not handled by the German Labor Front."

In the following Exhibit 1445, also minutes of the Construction Conference of the 14th, on page 6 of the English, page 12 of the German —

DR. GIERLICH: Dr. Gierlich, counsel for the defendant Dr. Schmitz. Your Honor, in Document 1444 the Prosecution in its index says and I quote: "Camp Care and Supervision". The German text, however, which we have received, only speaks of "Camp Care." The word "Supervision", however, neither appears in the heading nor in the text. It says and I quote: "The care of the barracks is in our hands and not by the German Labor Front." I should merely point that out in order to correct the document. Beyond that, I should be grateful to the Prosecution if it would announce under what aspects it considers that there is a relevancy in this document. Is it the opinion of the Prosecution that the camps which are mentioned here are the very camps which were mentioned in the former documents? In other words, does the Prosecution refer to these matters to camps where concentration camp inmates were housed? The Prosecution has brought no evidence to substantiate any such thesis. We are here concerned with other camps and not those camps with which the Prosecution dealt formerly in their evidence before. However, before making a formal objection, I ask the Prosecution to voice their point-of-view after they first clear up the first point I raised: where is the relevancy of this document?

THE PRESIDENT: We will hear what the prosecution has to say.

MR. MINSKOFF: May it please the Court, the Prosecution at this point hadn't undertaken to characterize or interpret what happened at the Construction Conference. It merely quoted a portion of the Construction Conference to the Court. The interpretation appears in the English text

to be two-fold. The heading says "Camp Care and Supervision". In the text itself it just says "supervision."

THE PRESIDENT: Do you stand on the proposition that this is a correct translation?

MR. MINSKOFF: I think this is a correct translation, your Honor, and on the question of what we intended to include by the term, that is, whether we intended foreign workers or concentration camp inmates; at this point, I believe the document is referring to all of their workers; all their foreign workers, the Eastern workers and Western workers in Europe who came to Auschwitz.

THE PRESIDENT: Well, where in the document now is the basis for that conclusion so that we can see if this is appropriate to the issue here?

MR. MINSKOFF: Well, in this document itself, your Honor, there's none. There's no indication that it is limited at all. It will be shown that actually there were two types of supervision; one of inmates and one over foreign workers and from this document no conclusion can be drawn except from the further evidence which may appear later as to what type of persons were in the camp at the present time and under whose supervision they were.

DR. OIERLICH: Your Honor, there are only two possibilities; either the copy of the document which we received is wrong or the translation is wrong. In the copy which is before me it says in the heading very clearly, "Camp Care". This has to be translated as "Camp Care", "Lagerbetreuung", and the text reads and I quote: "The care of the barracks is being carried out by ourselves and not by the Labor Front." The word "supervision", therefore, can neither be found in the heading nor in the text.

THE PRESIDENT: Can't counsel check the original document and get this matter straightened out. It isn't a technical matter and there shouldn't be much of a problem on the translation of that.

MR. MINSKOFF: In the document itself, your Honor, there's only one word used and while the translation is either "care" or "supervision", either one would be accurate it is probably better to have both "care" and "supervision" in the heading and then "supervision" later on in the text.

DR. GIERLICH: Your Honor, I have just looked at the original. There's no mention made of "supervision". It's one word and they translate it one way or the other and they put it both ways in the heading.

THE PRESIDENT: That's calculated to be misleading a little bit because it might indicate there's two phases of the matter.

MR. MINSKOFF: There's no objection, your Honor, on the part of the Prosecution to strike one or the other of the words out.

THE PRESIDENT: Which word do you think should be stricken out?

MR. MINSKOFF: It's a difficult concept. The word "Betreuung", it means --

THE PRESIDENT: Well, you evidently think it means one or the other. You say it's not necessary, what's your choice?

MR. SPRECHER: Mr. President, the word "Betreuung" in German does not necessarily have a complete and identical literal translation with either the word "care" or the word "supervision". All that Dr. Gierlich's had just said now, as far as I can tell, is that he does not particularly like the translation of the word "Betreuung" as "supervision" whereas we are inclined to the view that these words together help you get a proper view of the word "Betreuung" more than the elimination of the word "supervision" would.

THE PRESIDENT: This matter is referred to counsel for an informal conference. We will put a question-mark opposite the index to indicate that there is a question about it and you gentlemen try to resolve these differences and if you can't, the only thing I know the Tribunal to do is to find its own interpreters and arrive at what is the proper translation.

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But, Gentlemen, take it up informally between counsel and let us know again what conclusion you have reached, if any. The Court can see your point, there being used two words in the disjunctive and it might imply or infer that the subject matters relates to two subjects rather than one and you apparently agree it relates to one subject but you can't define it to us. That's really the problem as I see it.

DR. GIERLICH: Your Honor, for purposes of clarifying the record let me point out the following; the Prosecution at first maintained that in the original text both words were contained. The word "Camp Care", "Lagerbetreuung", and the word "Aufsicht" which is control or supervision. It has now been clearly proven that in the original document the only word used is "camp care", "Lagerbetreuung." As long as the Prosecution themselves translated these things as "camp care." There can be no doubt that "camp care" has nothing in the least to do with supervision and I want to clear up here that in the German original text only one word has been used which, by the Prosecution, has been translated as "camp care". I do not understand how any confusion can arise and how another word can be added which includes a sense which can be justified at all.

THE PRESIDENT: Well, we understand the position of the parties and I do remember that counsel for the Prosecution first said it was one word used in the title head and another in the body of the statement but I think now it's agreed that it is one word. It's just a question of what it means. If you gentlemen cannot agree on what it means we will have to find out some way to satisfy our own minds. The matter will be passed and we do expect you to report to us as soon as you have conferred as to whether you can or cannot agree.

MR. MINSKOFF: If your Honors please, on the point raised by counsel it might be helpful if we pointed out that the sentence that was read that referred to the German Labor Front and that would indicate they were referring not to concentration camp inmates. It was limited to the other workers.

THE PRESIDENT: Counsel may proceed.

DR. SEIDL: Dr. Seidl counsel for the defendant Dr. Duerrfeld. Your Honor, I should merely like to ask the Tribunal to insert a question-mark near Exhibit 1446 at the margin of the index. I don't want to say too much regarding that document because it's contents speak for itself.

THE PRESIDENT: Very well.

MR. MINSKOFF: In Prosecution Exhibit 1445 on page 6 of the English and page 12 of the German the following is stated: "The billeting in existing huts was increased by closer quartering of the Polish inhabitants. Delivery of washing and toilet huts is extremely tardy." Here again the early confusion carries over. The reference is only to foreign labor. They are not yet at this point referring to any concentration camp inmates with respect to housing and quartering conditions.

In Exhibit 1446 on page 17 of the English and 35 of the German the necessity is indicated for providing a fence around the Polish camp to facilitate the guarding of it. The Prosecution only calls attention to that to indicate the nature of the employment in question as voluntary or involuntary. In Exhibit 1447 the Court's attention is drawn to Page 27 of the English and page 53 of the German. This again is in the minutes of the Construction Conference and the following appears: "The employed Croats have proven satisfactory and predominantly they were used for the surface construction work of railroads." Under the heading "Polish Forced Labor" it is stated: "Employed only recently; therefore, no evaluation possible yet." Under the heading "Women from Ukraine", it is noted "Well-fitted for evacuation work." Under the heading "Belgians" it is stated, "Poor performance; high rate of sickness; may drop out."

In Prosecution Exhibit 1448, again minutes of a Construction Conference, the Court's attention is drawn to page 56 of the English, 100 of the German. This portion is called to your Honors' attention to indicate the attitude of the administration of I.G. Auschwitz for its employees. It is stated and I quote: "Sickness is divided among the individual nations as follows" and refers to the Poles and Italians and French. Then it states "In order to reduce the number of cases of sickness among the French workers, a French nursing orderly has been detailed, by agreement with the firm of Setrabe, to separate

the malingerers from those who are genuinely ill, before they are examined by the doctor, so that the malingerers are no longer brought to the doctor."

In contrast the attitude toward the German workers is found in the next paragraph:

"As a fairly large-scale typhus epidemic has broken out in the Auschwitz concentration camp, and as an increasingly large number of typhus have occurred in the town of Auschwitz, the danger of these two diseases was pointed out in the notification to the works, and it was recommended that all German and ethnic German members of the staff be inoculated against typhoid and typhus." The Prosecution now offers - -

THE PRESIDENT: Just moment; the Tribunal will rise for its morning recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

MR. SPRECHER: Mr. President, we've just begun a particular book, and it would be a convenient time to put on, and try to get off, two of the announced witnesses so that we can have more room for scheduling some further witnesses. We propose to call, at this time, Karl Mueller and then follow him by Heinz Schmied-Lossberg. The books are Books 31 and 54.

THE PRESIDENT: These are both German nationals, aren't they?

MR. SPRECHER: Yes.

THE PRESIDENT: Which one do you wish first?

MR. SPRECHER: Dr. Newman will examine Dr. Karl Mueller.

THE PRESIDENT: The Marshal may bring in the witness.

Mr. Marshal, will you adjust the witness's earphones so that he may be sworn.

DR. KARL MUELLER, a witness, took the stand and testified as follows:

THE PRESIDENT: Mr. Witness, you will please remain standing for the purpose of being sworn. You will raise your right hand, say "I", and state your name.

THE WITNESS: I, Karl Friedrich Mueller --

THE PRESIDENT: You will repeat after me:

Swear by God, the Almighty and the Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

The witness may be seated.

Witness, may the Tribunal inquire if the operation of the signal system that is on your witness stand -- has that been explained to you?

THE WITNESS: Yes.

THE PRESIDENT: Then, just one further admonition. Please speak slowly in order that the translation staff may keep up with you, and please make your answers as direct and brief as you consistently may. Bear in mind that it is not necessary for you to volunteer any information whatever. If your answer is deemed by counsel to be inadequate,

another question will be asked. If you will bear these matters in mind, it will expedite your examination.

The witness is now with the Prosecution.

DIRECT EXAMINATION

BY DR. NEWMAN:

Q Your Honors, we have to deal with one affidavit. This is our Exhibit 1124, NI-11445. This is our Book 54, page 130 sequentis of the English and 197 of the German book.

Mr. Witness, will you please state your name once again, for the record?

A Karl Friedrich Mueller.

Q And what's your present residence?

A Berlin-Kladow, Manbachstraesse 21.

Q Is there a German copy of your affidavit, NI-11445, before you?

A Yes.

Q Were there any discussions between yourself and a representative of the Prosecution, since you arrived in Murnberg, concerning the affidavit?

A Yes, this morning. Mr. Newman.

Q No further questions.

THE PRESIDENT: Is that all, Mr. Prosecutor?

The defense may cross examine the witness.

CROSS EXAMINATION

BY DR. VON KELLER (Defense Counsel for defendant von Schnitzler):

Q Witness, in this affidavit, Exhibit 1124, you describe your relationship to the so-called Prague Association (Prager Verein) and the negotiations which took place in the year 1938 between the Ruetgers Werke and the Prager Verein, on the one side, and the I.G. and the Prager Verein, on the other. You were in the Vorstand of the Ruetgers Werke since the year 1916, is that right?

A Yes.

Q In order to clarify the commercial situation, I should like to put two questions to you.

What was the extent of the capital of the Ruetgers Werke?

A Thirty-four million.

Q How about the capital of the I.G., approximately?

A Eight hundred or something like that.

Q And later, over one billion, is that right?

A Yes, I assume so.

Q Was your firm in competition with the I.G.?

A No, we had very pleasant mutual business contact. One cannot call it competition.

Q But there were certain fields, for instance, in the production, where you overlapped?

A Yes, only in a subsidiary company, the Silesian Saarau, we had a certain conflict of interest with I.G., but these difficulties were removed in the most friendly way by reaching agreements which had a most excellent effect.

Q Is it correct, if I now go over to the negotiations with the Prague gentlemen, on their own initiative, showed an interest in the year 1938 to conform to the new situation as it came up then? I particularly refer to the second paragraph in your affidavit, and I quote:

"The gentlemen of the Prague Verein came into contact with me."

A As far as I recall, the first discussions took place in Aussig, and then there was a second discussion in Prague. The chairman of the Aufsichtsrat was present at this second discussion, but it was merely an exchange of ideas to the effect that the long-standing business contact was to be made closer by an exchange of stock. We wanted to give up Ruetgers stock, and the Prager Verein was to exchange them for Prager stock.

Q If I understood you correctly, there was some sort of approach made towards the German firm, is that true?

A Yes.

Q Witness, you now go on to describe in your affidavit the negotiations in Berlin. You say that on Sunday, the 6th of November, you had a conversation with the Prague gentlemen in the Adlon Hotel?

A Together with my colleague, Carl.

Q Were these Prague gentlemen in Berlin exclusively for purpose of negotiations with Ruetgers people?

A No.

Q Did the Prager gentlemen before that time enter into negotiations with the I.G. as far as you are informed?

A I cannot say. I did not know that.

Q You go on to say that during these negotiations in the Adlon Hotel, specifically during lunch, Herr von Schnitzler had arrived and had asked in passing how far negotiations had gone.

A I think that was after we had finished eating. We were sitting over a glass of beer and Mr. von Schnitzler entered the room and came up to us. I think shortly thereafter Mr. ter Meer or Mr. Ilgner -- I don't remember exactly -- entered, too, and then we had a very short

conversation.

Q During that meeting did you have the impression that the I.G. tried to include themselves forcibly into the negotiations between Rustgers and the Prager gentlemen?

A No.

Q In your affidavit, witness, you mention the following sentence which I unfortunately have to read fully into the record in order to put a question to you afterwards. This sentence can be found on page 3 of the German text at the top.

"Apparently the fact that the representatives of Prager Verein had engaged in such a conversation with us, that is to say, with Rustgers Werke, was the reason why, as we heard, the meeting which was held on the following day between Farbon, von Hayden and the Prager Verein in the Dresdener Bank took the form of a so-called closed session", Klausurverhandlung". This word, "Klausurverhandlung", closed session, could bring about the impression as if we are here concerned with a looking themselves in of these gentlemen of the Prager Verein. Was that your intention, may I ask you, when formulating the affidavit?"

A No. That is a completely wrong interpretation. An agreement was made with the Prager gentlemen that on the afternoon of the next day they were to call up and tell us whether they would have an opportunity to talk to us again. They did not call us up, however. On Tuesday, one day later, General Director Rasch called me up and said.

"I beg your pardon for not calling you up yesterday, but it was not possible because there were negotiations from morning until late at night. We had no opportunity to leave the room."

This word, "Klausur", was mentioned by Mr. Basch himself and I repeated it only because it made a certain impression on me. This is why this sentence was expressed in this way.

Q In other words, you don't know that there was any disturbance there or any interference with movement?

A No.

Q Well, you must excuse my going into this point a little more at greater length because I think it is important. You said the gentlemen had no possibility to leave the room, but does that mean that they were prevented from doing so, or does it mean that the negotiations were carried on in such a manner that the entire time of those gentlemen was taken up by the conversation so that they couldn't actually leave?

A That is what I thought. I only repeated here what Mr. Basch told me the next day. What actually happened during the negotiations I had no way of judging.

Q Did you receive any hint that any prevention of their leaving was attempted by Mr. Basch?

A Oh, that was ten years ago. I don't believe that that was said.

Q Did any of the gentlemen of the Prager Verein at a later date perhaps give you a hint that unfair methods were used, or did any one of them say that the Prager gentlemen were placed under pressure?

A No, certainly not.

Q You say that lunch was served in the room, as far as you can judge, was that done for purpose of expediting the negotiations or from a point of view of pressure?

A I cannot judge that. Mr. Basch just told me they did not even take time to eat, but the food was brought into

the room. That happens frequently. It is customary.

Q Witness, in the last part of your affidavit you say and I quote: "We could not interfere with later developments. I must say at first that on the 7th of November, that is to say, on Monday, a so-called preliminary contract was entered into between the Prager gentlemen and the I.G."

A That is what I was told, but later I heard that von Heyden, who was a partner in this business, had signed a preliminary contract with Aussig earlier.

Q Then may I understand your affidavit to mean that the I.G. had received a certain amount of advantage and had rushed ahead of their competitors by some length the Rustgers Werke, if I may put it that way. Do you believe that this advancement had any political character at all, or do you think that the nature of this advance was purely based upon a commercial field?

A The latter is probably true. In any case, we stopped negotiations after we heard that Farben had a preliminary contract, because, after all, we had had friendly relations with Farben for many decades, and we would never have done anything to cloud these pleasant relations in any way.

Q Witness, I now come to the end of my examination, and I should like to mention a number of formulations which may perhaps create a wrong impression here. On page 2 of your affidavit you say,

"The I.G. which had always cast envious eyes on Prager Verein's big dye palette" --

In another passage you say,

"The Prague gentlemen were not allowed to get out of our reach", and a number of other similar formulations. I may tell you that your affidavit was submitted by the

Prosecution under the point of view of so-called spoliation. Therefore, I deem it particularly important to ask you whether you yourself have formulated this affidavit.

A No.

Q Was a formulated copy of this affidavit submitted to you for your signature?

A Yes.

DR. von KELLER: Your Honor, I have no further questions.

DR. HENZE: Dr. Henze, Counsel for the defendant Dr. Kugler.

CROSS EXAMINATION

BY DR. HENZE:

Q I have only one brief question, Dr. Mueller. You just said that your first negotiations with the gentlemen of the Prager Verein had taken place in Aussig. Can you give me the exact date?

A No.

Q You remember, do you, that the Munich agreement was made. In the course of that agreement, Sudetenland was given up. Was this discussion in Aussig before or after that date?

A I cannot say. Every two or three months regularly we had discussions with the Aussig Verein who were customers of ours. We had these discussions in Berlin, Aussig and Prague. After ten years I really cannot remember when we had a particular discussion.

Q But the conversation took place in Aussig?

A Yes.

DR. HENZE: Thank you.

THE PRESIDENT: Any further cross examinations? None being requested, the Prosecution may re-examine, if it cares to do so.

MR. SPRECHER: May we have just a second, Your Honor?

THE PRESIDENT: Yes, Yes, surely.

REDIRECT EXAMINATION

BY MR. NEWMAN:

Q Mr. Witness, you were asked on cross examination whether the words, and I quote from the English text --

MR. NEWMAN: That is the third paragraph, Your Honors of our first page.

Q -- firstly, "I.G. Farbenindustrie which had always cast envious eyes on Prager Verein's big dye palette" --

Now you were asked whether the affidavit was prepared by you, and my question is do you remember whether these words were used by you or were they used by the interrogator?

A These expressions originated from General Director Meyer. After the first World War he held a position in Aussig, and then he took up dyestuff production at Aussig; and at every meeting Meyer emphasized that he kept expanding his big dye palette and some day there would be an understanding with I.G.

I used this expression of Mr. Meyer's which he was in the habit of using.

A Am I correct in understanding -- please correct me if I am wrong -- do you mean to say by that that these words were used by you during the interrogation and not by the interrogator, or do you mean they were used by the interrogator?

A No. No. No. It was emphasized, this expression.

Q So may I again ask you who used these words during the interrogation?

A Well, it could only have been me.

MR. NEWMAN: Excuse me, Your Honor, I would like to

find another passage which was quoted by the Defense in the English.

THE PRESIDENT: The Tribunal will observe that this affidavit in a very large measure shows on its face that its content is hearsay. Counsel for the Defense have exercised a very sound discretion in not cross examining very much with respect to it. The Tribunal is hopeful that the Prosecution will not offend now by conducting too much of a redirect examination in opening the way to a prolonged cross examination.

MR. NEWMAN: Thank you. Thank you, Mr. President. I just wanted to bring out that there is no misunderstanding on this point that all the expressions appearing in this affidavit were the witness' and not the Prosecution's.

THE PRESIDENT: Very well. Very well. We will permit that to be done.

BY MR. NEWMAN:

Q Now just one more question, Mr. Witness. What was the idea when the gentlemen from Prager Verein contacted you in order to bring about an agreement? Can you kindly explain this?

THE PRESIDENT: Now we are not interested in ideas. What was said or what was done would be a fact, and we would be glad to hear it, but if we go into the realm of ideas that people had in their minds --

BY MR. NEWMAN:

Was it or was it not the purpose of the contact between yourself, Ruetgers Werke and Prager Verein to bring about a connection which was not to be on a permanent basis?

THE PRESIDENT: Now that is highly objectionable. The purpose is the ultimate thing for the Tribunal to determine. Let us know what he knows about it. What was

said or what he heard is thoroughly competent, but you are opening up a wide field here by getting into what somebody's purpose might have been. That is for us to determine.

MR. NEWMAN: Thank you.

BY MR. NEWMAN:

Q Were there any discussions between Prager Verein and yourself why the Prager Verein wanted you to take over its shares and give you shares in turn?

DR. BOETTCHER: Objection. The affidavit does not discuss that.

THE PRESIDENT: That is true, and that was the purpose of the Tribunal's warning a moment ago. We recognize as we have indicated before that Counsel for the Prosecution is not limited in its use of this witness to the affidavit if they wish to make him a witness for the Prosecution and ask him as to other things, but that should be done with full knowledge of the fact that that opens the door to further cross examination, and it should be done with full appreciation of the circumstances.

The objection is overruled. Counsel, the Tribunal overruled the objection to your question. We think that question is proper.

MR. NEWMAN: If you allow, Mr. President, I would like to put this one question.

THE PRESIDENT: Yes.

BY MR. NEWMAN:

Q So please answer. Do you remember my question?

A No.

THE PRESIDENT: You may restate it, Counsel.

BY MR. NEWMAN:

Q Were there any discussions between yourself and the

Prager Verein as to why the Prager Verein wanted you to take over part of its shares and in turn transfer to the Prager Verein part of your shares?

THE PRESIDENT: You may answer that directly "yes" or "no", or that you do not remember, and then if Counsel wants to know what the discussion was, he can ask you.

THE WITNESS: Yes. Well, as far as I remember, the men of the Prager Verein realized that something had to happen because of the political events, and that they had to have some relations with a German firm, and that is why they had the idea of establishing close contact with some chemical firm. That is how I remember it.

MR. NEWMAN: Thank you. That's all. I have no more questions.

THE PRESIDENT: Any further cross examination?

DR. von KELLER: Dr. von Keller, Counsel for the defendant von Schnitzler.

RECROSS EXAMINATION

BY DR. von KELLER:

Q A very brief question, witness. When being re-examined you were asked about the dye palotte. If I understood you correctly, this was a repetition of an expression used by Mr. Meyer?

A Yes.

Q Then the representative of the Prosecution without asking you whether all the expressions which were brought up in the affidavit originated from you went on to ask you more questions. Now if you look at the affidavit again, and after taking into consideration what you have been asked, can the formulation still be maintained or is it correct that the formulation of the affidavit as such was carried out by

a representative of the Prosecution?

MR. SPRECHER: We have no objection to the question. We have distinct objections to the speech made by Dr. Keller before he asked the question.

THE PRESIDENT: Oh, there is nothing wrong about that. He is directing the attention of the witness to the subject that he wants to inquire about. Let him answer the question. You opened the door on your redirect examination. You went into it. You will have to --

MR. SPRECHER: We don't deny that.

THE PRESIDENT: There is nothing before the Tribunal. Let the witness answer.

BY DR. von KELLER:

Q Do you still remember the question, witness?

A I don't know what I should say. We had a very long discussion about the whole subject, and a document was drawn up but not by me. One can assume that the terms were recorded which I used, but I didn't examine it so carefully word for word, because I considered it so unimportant. It was merely recording something that happened. Whether words are interpreted one way or another, I never thought about that.

Q But you yourself didn't draw it up, did you?

A No. This record was shown to me. It is an extract of a very long and detailed discussion.

Q You didn't draw up the excerpt, did you?

A No.

Q I have no further question.

MR. SPRECHER: Nor does the Prosecution on the basis of that.

THE PRESIDENT: The Tribunal assumes there is no further

examination of this witness desired. None appearing, the witness is excused from further attendance, and the Marshal will escort him from the box.

The Prosecution may call its next witness.

MR. SPRECHER: The Prosecution calls Schmied-Lossberg.

HEINZ SCHMIED-LOSSBERG, a witness, took the stand and testified as follows:

THE PRESIDENT: Witness, you will remain standing for the purpose of being sworn, raise your right hand, say "I" and state your name.

THE WITNESS: I, Heinz Schmied-Lossberg...

THE PRESIDENT: And now you please repeat after me: ...swear by God, the almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(Witness repeated the oath.)

The witness may be seated.

Mr. Witness, we assume that the use of these signal lights was explained to you before you came in.

THE WITNESS: Yes.

THE PRESIDENT: Now, just one further thing. On account of translation problems, it is necessary to speak more slowly and to pause between sentences here than in ordinary conversation because the Tribunal does not hear directly what you say, but only a translation of it. Now, please do that, and when a question is asked, answer it directly but as briefly as you can and do not presume to anticipate what else counsel may like to know. If any further information is desired; if your question is deemed to be inadequate another question will be asked. Bear that in mind as best you can.

Prosecution may proceed.

DIRECT EXAMINATION

BY MR. CHARMATZ:

Q Mr. Witness, do you have a German mimeograph of the extract from your interrogation of 6 May 1947 before you?

A Yes.

Q Did you have a chance to go through this mimeograph this morning?

A Yes.

THE PRESIDENT: Mr. Prosecutor, will you give us the book reference?

MR. CHARMATZ: The document in question -- I am sorry, your Honor --

is contained in Document Book 31. It is NI-7711, Exhibit 672, and can be found on page 27 of the English text of Document Book 31, and page 76 of the German text, your Honor.

THE PRESIDENT: Thank you.

BY MR. CHARMATZ:

Q Mr. Witness, is there anything you want to change or to add in this interrogation, in the answers which you gave in this interrogation?

A Certain changes were made, but I do not think they were changes of any fundamental nature.

MR. CHARMATZ: May I point out to your Honors that on page 2 of the stenograph, in Number 32, at the end of the answer "Ministerialrat Dr. Gaser, G-a-s-e-r, is mentioned. The "r" at the end should be omitted. It is Gase.

The Prosecution has no further questions, your Honors.

THE PRESIDENT: The Defense may cross-examine the witness.

CROSS EXAMINATION

BY DR. GATHER (Counsel for Dr. Ambros):

Q A few questions to clarify your interrogation, witness. On page 2 you say that you were provisionally entrusted with the duties of a director of the Montanwerke.

Is it true if I assume that by virtue of this activity you had insight into the methods of the Montan Foundation?

A Only subsequently.

Q But you know of this subject not only from hearsay but you worked with it; is that true?

A Naturally, I do know about the constructions.

Q So that your present testimony may be assumed to be competent?

A Yes.

Q Thank you. In this interrogation, on page 3, you give an explanation of how the Montan Foundation came about, historically. A preliminary question: Do you know who drew up the so-called Montan Plan?

A I think it was the Army Ordnance Office, in collaboration with

Dr. Zeidelhack.

Q Yes, I agree with you. Dr. Zeidelhack was General Director of Montan up to 1943?

A Yes.

Q Witness, does this fact not indicate that the instigation Montan Plan and the draft came from Dr. Zeidelhack and from the Army Ordnance Office? Does this not indicate that the Montan Foundation was strongly one-sided and undertaken in the interests of the Army Ordnance Office?

A These were factories owned by the Army.

Q Now, to come back to the historical explanation, if I may repeat, you said that the General Staff considered the extension of the capacity necessary. Private industry did not want to supply, or could not supply, the funds; that the Army Ordnance Office did not wish to produce itself. Have I understood you correctly?

A Yes. The General Staff -- not Army Ordnance Office.

Q Yes, the Army Ordnance Office. Now, I am interested in the reasons why industry could not expand the capacity itself. As one of these reasons, you give on page 5: "Industry did not want to assume the risk or could not assume the risk."

Again a preliminary question. Is it not true that according to your conviction Farben, as such, was not known as an organization that was afraid of risks?

A No.

Q Now, is it true if I assume that Farben did not want to take the risk of this Montanwerke because, from the point of view of private industry, they were uninteresting projects; that Farben as a private enterprise from the commercial point of view, and in view of the foreign business, had to be adapted to peacetime production?

A That is exactly what I said. This Sparte was only armament, was only meant for armament production which partly started in peacetime but really was intended as a shadow factory in case of war.

Q Yes, I see. You emphasize this viewpoint with justification. On

page 5 of the affidavit, page 80 in the German text, I presume that that is page 32 in the English --

MR. SPRECHER: The questions are numbered and answered here. It would be helpful to the Prosecution attempting to follow this if Counsel could please use them.

DR. GATHER: Yes, very well.

BY DR. GATHER:

Q In the question numbered 36 you emphasize this point of view, especially in referring to explosives plants. By the same argumentation does that not apply equally to questions of chemical warfare agents?

A Certainly.

Q Thank you. Now, again, under No. 36, you refer to so-called "shadow plants," stand-by plants, etc. That refers also to chemical warfare agents?

A I cannot reply to this question in detail.

Q Thank you; that is not necessary then.

Now, I am still under No. 36, in the middle; you speak of the inadequate equipment of the operating companies compared to their duties. This fact means that private industry, including I.G. Farben, was only very little interested in these plants?

A I wanted to express with that sentence that these operating companies were founded and were naturally operated by the parent company from a technical and commercial point of view, and had to be supervised and directed by parent companies too.

Q And how about the private business interest in these plants? The element of profit is important there. Is it true that prices for the products of the Montanwerke were established according to the principles for the assignment of public projects?

A I think I can answer this question with an unqualified yes.

Q Is it also true that the prices were supervised by the price control agency of the OKH?

A At first OKH and later the Armament Ministry.

Q Is it true that the extent of production was also determined by the OKH or the Army Ordnance Office?

A Yes; exclusively, because the agency placing the order was the Army Ordnance Office.

THE PRESIDENT: Just a moment please. You are placing too heavy a strain on the facilities here. Mr. Witness, after you have heard a question, if you will wait until the question has been translated to us, before you start making your answer...and I might admonish Counsel also that he is going a little bit too rapidly.

Q Is it true that the prices were established according to self cost?

A Yes; I hesitate in answering because I really don't know how else prices can be fixed from a private, economic point of view, and I already said that production was not in the hands of that company.

Q Is it also true that the products were only supplied to the Reich and Reich agencies?

A Yes.

THE PRESIDENT: Just a moment, please. We will recess for lunch — unless you are almost through. If you want a little more time, we had better rise until this afternoon.

The Tribunal will rise until one-thirty.

(A recess was taken until 1330 hours.)

AFTERNOON SESSION

THE MARSHAL: The Tribunal is again in session.

MR. SPEECHER: Mr. President, sometimes administrative difficulties lead to some confusion with respect to the notice concerning witnesses, and rather than merely give the notice through the Secretary General, do you object if I read this at this time concerning witnesses?

THE PRESIDENT: No; certainly, that is all right.

MR. SPEECHER: Dr. Seidl, counsel for the defendant Duerrfeld, has indicated that the Defense will want brought here to testify in open court all affiants who have given affidavits on the Auschwitz Count. We have given notice that tomorrow the following witnesses will be present, and these people, I am informed, are actually present, so they should appear tomorrow:

Ludwig Hess (H-e-s-s), a German; Arnest Tauber, a Czech; Noack Treister, a Czech. I am not sure whether they can speak the German language or whether we will have to have an interpreter. We will check after talking with them further today.

THE PRESIDENT: Just in that connection, will you see that the Tribunal is furnished with the proper oath for use of a Czech as a witness?

MR. SPEECHER: I am not certain I can; I shall try.

THE PRESIDENT: Will you undertake to see what you can do to help us out?

MR. SPEECHER: And then we are serving notice with respect to the following witnesses for appearance on or shortly after the first day after this long weekend, Tuesday, 12 November:

Gregoire Afrine, French; Horacio Charney, British; Charles Coward, British; Leonard Cates, British; Frederick Davison, British; Rudolf Ehrlich, Czech; Berthold Epstein, Czech; Kaj Feinberg, Norwegian; Robert Ferris, British; Dennis Greenham, British; Gustav Herzog, Austrian; Charles Hill, British; Salomon Kohn (K-o-h-n), German; Emil Orlik, Czech; Herbert Rosenberg, German; Jan (J-a-n) Spencer,

British; Leon Staischak (S-t-a-i-s-c-h-a-k), Polish; Jan Stern (S-t-a-r-n), Czech; Rudolf Vitek, Czech; Norbert Lollheim, German.

Thank you very much.

THE PRESIDENT: Counsel for the Defense will take notice of what the Prosecution has said with reference to these witnesses.

The Defense may continue with the cross-examination of the witness in the box.

DR. SCHWAB-LOSSBERG - Resumed

CROSS-EXAMINATION (Continued)

BY DR. GATHER (Counsel for defendant Ambros):

Q. Witness, in order to maintain the continuity of your last replies to my last questions, I should like to summarize and say that in your last replies you confirmed that the fixing of prices with the Montan plants was done according to the L. S. O.; the supervision of prices was done by the OKH, Office for the Fixing of Prices; the extent of production was determined by the OKH; and the Reich was the sole recipient of the products.

Witness, if you take these facts into consideration, can you also confirm to me that the profit margin remaining was so slight as not even to cover normal interest on the invested capital?

Witness, I ask you to wait with your reply until after the translation has come through.

A. The profit margin in the case of a chemical plant, if I remember correctly, averaged between two and three percent in all Montan plants.

Q. In other words, there was no instigation for private business from this point of view? Is that your conviction, too?

A. The paying of interest was involved, and it was always instigated by the Reich.

Q. Thank you, witness. Now, in the interrogation, at the beginning of paragraph 36, you deal with the manner in which the contracts were settled when the Montanwerke were founded. You then

make a distinction between a blanket contract and a lease contract.

Let me first deal with the blanket contract. As example of these blanket contracts, you mention I. G., Flick Rhein-Metall, etc. Is it not true that these blanket contracts extended systematically throughout all the industry which was concerned with armament assignments on a large scale, from a technical point of view. For instance, the chemical sector, the sector of steel - working industry, and so on.

A I cannot answer that question because I do not know the answer.

Q Witness, then let me just limit myself to the chemical sector. The impression might be created that, for instance, through the appointment of the I. G., the I. G. specifically was chosen for the operating of the Montan plants. In order to fit in the I. G. clearly into this entire complex, I should like to submit to you a chart, which I should like to designate as Achrose Exhibit 7, for the time being, for purposes of identification. (Document handed to witness).

Witness, does this chart correctly, indicate that a number of chemical enterprises were assigned to the planning and the erection of chemical factories belonging to the Reich?

A As far as I can see during this brief period of time, this chart, on the whole seems to be correct.

Q Thank you.

According to your knowledge of the situation prevailing at the time, does this chart show correctly that the relationships as to property and contracts, which are marked with red in the chart, were determined by the Reich, that is OKW, etc., and were channeled via the H.W.A., Mun. III and Mun. VI, through the Montan G.m.b.h. individual operating companies of these Montan plants?

A Technical directives were never issued through the Montan, but always directly through the Army Ordnance Office, Armament Department, to the Works Operating companies. That means, either the parent companies or the plants themselves.

Q You find a yellow sign here, referring to Orders Contracts, such orders went directly from the Reich to the firm over the Raw Material Department. Is that true?

A Yes.

Q Thank you.

A There is one minor reservation, I cannot say decisively whether perhaps the Army Ordnance Office was also included, or as transmitter of orders.

Q Well, basically, I merely wanted to clarify the relationship to the superior state agencies.

A Oh, yes. That is correctly represented here.

Q Is it not common to all Montan plants - and you can put this chart away now - that, first of all, they were built by order and on account of the OKH?

A Yes.

Q Secondly, is it not true that they always belonged to the Reich?

A Yes, they continued to belong to the Reich, with the exception of those plants which were built after about a year 1943,

upon the request of the Reich Armament, Ministry, which factories after 1943, were sold to private economy in order to bring production into the foreground.

Q And it is noteworthy the I.G. participated in such sales, as far as you remember.

A Yes, this explanation refers to the structure organization of production.

Q Thank you.

In other words, this statement refers to the I.G. only inasmuch as the I.G. acted as trustee through their operating companies and operated these plants?

A Yes, this was exactly what was expressed in the contracts.

Q Now, witness, with reference to your statement made in No. 36, where you mentioned blanket and lease contracts, would you please, in order to clarify this matter distinguish between Montan Werke which were built on Reich owned land and those which were built on Farben-owned land and were affiliated with existing I.G. Farben factories?

A Basically, it was ordered that factories owned were built by the Reich upon land owned by the Reich,

Q Is it witness, that in the case of plants on Farben-owned land, the Reich also safeguard its right to these installations because of the building law?

A In many cases, a settlement was reserved for a later period of time insofar as technically this would not interfere with things

Q I don't think we need to go into details. Does this form of building on Reich Owned land and building on Farben-owned land not show that operating companies had to be included because every factory owned land was completely separated from the parent company?

MR. SPEECHER: Mr. President, no reference in the questioning has been made for some time to any particular part of the affidavit, and we had thought that this questioning wouldn't last very long this line,

and hadn't objected but, off-hand, neither Mr. Charvatz nor I have been able to find a direct relationship with the affidavit.

THE PRESIDENT: I think you're entitled to be advised, as the Tribunal is, by counsel for the defense as to what this is directed to.

Counsel, can you tell us how you justify the inquiry from the interrogation?

DR. GATHER: Mr. President, it is my opinion that an interrogation or an affidavit cannot be corrected only insofar as it contains wrong statements, but also insofar as it contains incomplete statements, and such incompleteness created an impression would bring up misunderstandings or even give rise to a misinterpretation. In the case before us, the witness been questioned by the Prosecution as an expert with reference to the complex Montan companies. Only by hints has he given us any information; I am referring, for instance, to divisions by contracts and the relationship of I.G. Farben to this entire complex.

THE PRESIDENT: The Tribunal would agree with the premise stated by counsel that, certainly, there ought to be some latitude allowed to counsel to inquire about matters which he deems were not completely covered, but our attention has been directed to no specific statement contained in this interrogation that would seem to justify your present inquiry. We will sustain the objection. If you think it is narrowing you too much, you ask another, and it will give us perhaps a better conception of what you are approaching. The objection is sustained. Ask another question, may be you can get at it in a better way that will show its pertinency here.

BY DR. GATHER:

Witness, under paragraph 36 I'm sorry. I must correct myself. Under paragraph 43, you say, and I quote:

"As a matter of principle, the Montan did not participate in operating companies, with only a few exceptions."

Witness, you didn't want to say with that that the Montan or the OKH dispensed with every influence on these operating companies? After all, two representatives of the OKH were in the Aufsichtsrat of these operating companies, isn't that true?

A The representatives of the Army Ordnance Office were basically in the minority. The Army Ordnance Office and the Montan, however, always reserved the right of contract to send representatives to the Aufsichtsrat.

Q Witness, wasn't there actually such a strong connection of these operating companies with the Montan, that, for instance, the I.G., as the leasing party and that is also mentioned in a document of the Prosecution, Exhibit 637 in Book 35, often had to consider itself deprived of the freedom of operation which it should have held, in the position of a leasing party?

A This question can neither be answered with "yes" or "no", generally. A strong connection of course results from the fact that the production plants were the property of the Reich, that the Reich was the only agency ordering such production, and that the recipient of that production was also the Reich. Beyond that, the Reich during the war in particular, exercised a very strong influence on industry in general.

Q Wasn't that expressed by the fact that the Montan regularly sent binding circulars to those plants?

A These circulars, however, referred principally, if not exclusively, to accounting.

Which after all, does mean a certain amount of control.

Q. Isn't it true that this also means a very strong control?

A. Yes, but not a control as for technical production, but only a control regarding accounting, with reference to the lease.

Q. Well, in order not to transgress into these matters any further, is it not true that the Montaron fell within the sense which you mentioned; do you know the Montaron Company?

A. No. So far as I know, Dr. Schiffler worked on this case in the Vorstand,

Q. In that case, we don't have to clarify this matter any further. I don't think you would know that the Montaron had a 50 percent share in the Montan.

A. I know that this matter was discussed, that the Montan should participate in this operating company, and so far as I can remember now, I think we did take over some of the shares. However, I cannot tell you with absolute certainty whether this actually has occurred or not. I think you could clear that point up if you would inquire in Berlin.

Q. Then I can leave this subject. I wanted a few explanations but you cannot give them to me. One last question. Under paragraph 29 of your interrogation, on the first page you say that Dr. Zoidelhack, as the General Director of the Montan, was recalled about December 1943, at the instigation of Speer.

Q. Witness, did this occur in connection with a disciplinary proceeding initiated against Dr. Zoidelhack?

A. Has this question any connection with this interrogation?

MR. SPRECHER: Mr. President, I think I could only underline what the witness said because it is clearly beyond the scope of direct.

THE PRESIDENT: That, I think, is correct. The objection is sustained.

DR. GATHER: Thank you, I have no further questions, Your Honor.

THE PRESIDENT: Any further cross-examination of this witness?

MR. SPRECHER: One moment.

THE PRESIDENT: Is there any re-direct? Very well.

MR. SPRECHER: Mr. President, I do not believe the Prosecution will have any questions provided we are able to make one short explanation to you in that connection.

THE PRESIDENT: Very well.

MR. SPRECHER: We did not object to a number of the questions which were placed even though we considered them initially to be beyond the scope of the affidavit or direct examination. There could be, on the basis of these questions that were asked, a certain amount of discussion concerning various—a certain amount of interrogation by us now concerning various other motives which various industries, including I.O. may or may not have had, such as reprivatization and keeping the state out of certain fields where private industry wanted to go into.

But understanding that this is a court of jurists, that the facts here are heard by jurists and that the failure of the prosecution not to go into everything mentioned by the defense does not in any way indicate a waiver on our part, we are prepared not to ask any questions.

I trust you forgive the intrusion, but I only wanted to indicate to you why we are being so modest with respect to re-direct, at least in the present instance.

THE PRESIDENT: Very well. Call your next witness.

MR. SPRECHER: Mr. Minskoff will continue, with your permission with presenting documents, and I am told that the witness, Mr. Dvoracek has arrived and we will attempt to bring him on this afternoon.

THE PRESIDENT: Very well.

MR. MINSKOFF: May it please the Court, referring to Document Book 74, the Prosecution now offers in evidence, three documents which relate to the—

DR. GATHER, counsel for the defendant Ambros: Your Honors, before the presentation of documents in the Book 74, is continued, I should like to ask the Tribunal to insert a question mark in the index with respect to exhibits 1447 and 1448, because we have argumentation there, and not merely a statement of the contents.

THE PRESIDENT: That will be done.

MR. HINSKOFF: These documents, if Your Honor please, relate to the punishment of the slave workers at I.G. Auschwitz, referring to the forced foreign workers rather than the concentration camp inmates at this time.

The Prosecution offers Document III 10167, the index has 166 and that should be corrected: it is a typographical error, - as Prosecution's Exhibit 1449.

THE PRESIDENT: Counsel, the next document bears, in our books, number 10167. I take it you are referring to the document that is indexed at the bottom of page 2 now?

MR. HINSKOFF: That's right. It should be 167.

THE PRESIDENT: Thank you.

MR. HINSKOFF: That should be 167, that is an error, as Prosecution's Exhibit 1449; NI 10166, as Prosecution's Exhibit 1450, and NI 11007, as Prosecution's Exhibit 1451.

The first of these exhibits, 1449-----

DR. SEIDL, counsel for the defendant Duerrfeld:

Your Honors, from the translation it could not be recognized what documents are being submitted by the Prosecution. For this reason it would be expedient if the Prosecution not only name the document numbers, but would also say what the document, according to its contents we are concerned with, is. There may have been a misunderstanding in this instance.

THE PRESIDENT: We will have that matter adjusted right now. As we understand it, the document was numbered in the index book as

Document 10166; it really is 10167; is that correct?

MR. MINSKOFF: That is correct, your Honor.

THE PRESIDENT: That is the request of TEMO for a credit of 34,000 Reichsmark. Now you may go ahead and correct your other document number, which was 10167. What number does that bear?

MR. MINSKOFF: 166 is the next, Your Honor.

THE PRESIDENT: That is just reversing those numbers?

MR. MINSKOFF: That's correct.

MR. SEIDL: If I understood correctly, the document WI 10166 is Exhibit 1450. This is an affidavit of a certain Guenther Lotzmann. On behalf of the defendant, Dr. Duerrfeld, I object against the admission of this affidavit into evidence.

For my reasons I refer you to explanations which I already made this week. It is my opinion that the Prosecution should interrogate these witnesses directly without any affidavit. I am now making this objection in the case of all affidavits at this time, in order that I may not be forced to make the same objection in the case of every other affidavit submitted.

In particular, let me point out that in very many affidavits of the Prosecution, statements are contained which are merely based on hearsay, matters which are very often the personal opinion and conclusions of the affiant. Furthermore, it is my conviction that the cross-examination would be expedited if the witnesses appear here before the Tribunal and be examined directly, because in this way, much of what is contained in this affidavit would not burden the record, because the Defense would then be able to limit its position to those questions which have been admitted by the Tribunal during direct examination.

THE PRESIDENT: The Tribunal has previously ruled on the present objection and will stand by the ruling and overrule the objection to the document identified as Prosecution's Exhibit 1450.

The Tribunal will also, accord to counsel for the defendants the benefit of having an objection considered made to every similar affidavit that may be presented in the future. We may say this, that if we undertook to try to draw some narrow line as to what in an affidavit would be admitted, and what would not, we would spend a very great amount of time here trying to edit affidavits.

Counsel will have to rely upon the judgment of the members of the Tribunal as to what is competent and what is not competent, and also as to how matters of these kind should be waived.

The prosecution may proceed.

At page 63 of the English and 117 and 118 of the German and in Prosecution Exhibit 1449 the following appears in a request submitted to the "Take" for a credit:

"Within the framework of works security arrangements it is necessary to find a room to accommodate persons who have been detained pending settlement of some matter or other. Up to date, such people were accommodated in the factory grounds, hut 1 and 2. This accommodation afforded detainees scope for communicating with unauthorized persons at any time, in addition to presenting them with very favorable opportunities for escape. The number of criminal offenses and/or violations of labor discipline has recently risen to such an extent that the rooms provided were filled to capacity. To remedy this, construction of a solid building near the factory entrance in road B is proposed."

Before calling the Courts' attention to any portions of Exhibit 1450 the Prosecution wants to point out that this is not an affidavit of Mr. Letzmann. It was never signed by him. It was a statement under oath taken by an interrogator of the Prosecution and it appears in the Document Book as such a statement. The witness will be available for cross examination and at the very least, for cross interrogatories. I want to call it to the defense counsels' attention so if there is any objection they may state it.

On page 57 and 58 of Exhibit 1450, that is the English, 104 of the German, the affiant states: "Soon after I started working in I.G. Auschwitz, 1942, I had already found out that there too there was whipping as there had been in Leuna; this was mainly done by Sauerteig. Walter Duerrfeld, who knew of this, protected him in spite of it. At first I did not participate in this since I had been warned by events in Leuna. In contrast to the Leuna works,

it was always stressed in I.G. Auschwitz that as few as possible of the criminal cases should be handed over to the police, and this was done only in especially severe cases at the Works Security Chief's decision. In all other cases a settlement was made within the plant by giving warnings or imposing fines. Finally they also resorted to corporal punishment. The works management of the I.G. wanted to avoid that staff members might be kept away from work for any length of time through possible imprisonment if they were handed over to the police, and therefore they took measures within the works."

The Courts' attention is also directed to page 61 of the English and 114 of the German at the bottom of the page where it is stated: "I passed the more important occurrences reported to me by the agents to Niepmann who informed Walther Duerrfeld of them."

The Prosecution passes to Exhibit 1451 which is a punishment report. The organization described in the preceding document by the person who was in charge of punishments, had a system of reports. One of the reports is included in this prosecution's exhibit and the Courts' attention is called to page 64 of the English, 122 of the German, where the person being punished testified as to what he had done. Then on page 66 of the English and page 122 of the German there appears a memorandum with the stamp "I.G. Farbenindustrie" under it which states the source of the information which caused the arrest of the person being punished and it states: "We learned from a 'trusted person': The prisoner No. 79504 is trying to sell Dollar bills in the shop for compressed gas, asking 300 RM for Ten Dollars. The trusted person was told to enter into a deal with him and obtain a Ten Dollar bill from the afore-

mentioned prisoner who then told him that he could let him have some more which he was going to bring tomorrow: Further information will follow." Then on page 70 of the English and 126 of the German appears the punishment of 20 lashes.

The Prosecution now offers Documents NI-7967 as Prosecution Exhibit 1452, NI-11705 as Prosecution Exhibit 1453, NI-9818 as Prosecution Exhibit 1454 and NI-4829 as Prosecution Exhibit 1455. These documents all relate to the correction camp which was set up in I.G. Auschwitz in the Lager Menowitz. It refers here, if it please the Court, to foreign laborers, that is, for the forced and free laborers and not to concentration camp inmates. In the first of the documents, 1452 at page 74 of the English, 132 and 131 of the German, the following appears:

"Labor correction camps: Civilian foreign workers of the I.G. Farben were sent for at least six weeks to the labor correction camps for some reasons, e.g., because of a complaint by the master craftsman, or because they did not turn up for work, and the I.G. Farben requested that they were assigned to the most difficult work. Almost exclusively they were Poles and Ukrainians. Germans were never amongst them. Those labor correction camps were located in Camp 4, i.e., with us, but they were separated by an ordinary fence. Originally they had two huts, but later on two more were added. This labor correction camp belonged to the concentration camp, that means it was managed within the organizational set-up of Camp 4."

In the next affidavit which is 1453 Mr. Greeham, a British prisoner of war, states at page 75 of the English and 134 of the German:

"I knew one fellow, a Pole, who stayed away from

work for five days. As punishment he was converted from a "free" foreign worker to a concentration camp inmate. When next I saw him he was wearing the same striped pajama suit that the other concentration camp inmates wore. He told me that he was sentenced for six months. I don't recall whether the six months expired while I was still there, but I do know from my conversations with him that he never expected to get out after the six months were over. Others who were similarly sentenced never got out."

In Exhibit 1454 on page 78 and 79 of the English, 139 and 140 of the German, the affiant states: "The reform camp in Monowitz, Buna, was far worse than the Monowitz concentration camp. The food was bad, a kind of cattle-feed, grass-soup, and we were beaten even more than in the camp Monowitz. The inmates of the reform camp were sent to the worst Kommandos; e.g., Kommando No. 2. In the reform camp Monowitz I lost 25 kg in weight in three weeks. Some of my friends died there, e.g., Johann Domagalla. We had to work during severe frost in fatigue suits without socks, in clogs, in torn underwear, without caps. There were coats, but they were only fatigue coats. We received mittens, which, however, we were not allowed to wear during work."

In Exhibit 1455 on page 84 of the English and 149 of the German the witness states:

"Foreign workers, who violated regulations while at Buna, were sent to a labor training camp for about 2 months (correction camps). The training camp consisted of 12 or 14 huts and was a separate camp at Monowitz. It had an infirmary, but the treatment in the training camp was even worse than at Monowitz. The transfer to the training camp became effective upon foreman's recommendation."

The Prosecution now offers as Exhibit 1456, NI-10941. These are minutes of the TEA meeting and it is merely offered to indicate the defendants present and funds that were appropriated for Auschwitz.

DR. VON KELLER: Dr. von Keller, counsel for the defendant von Schnitzler. Your Honor, in the index to the document NI-10941, Exhibit 1456, under the list persons present the defendant von Schnitzler is mentioned. According to the document itself, according to the list persons present, on the last page of the document there's notation "Guests with reference to Point 1, von Schnitzler and others". I may point out to you that in this meeting Point 1, dealt with a subject which does not fall within the framework of these proceedings as far as I know. It was a scientific lecture regarding the synthesis of drugs to kill pain and stop cramps. The defendant von Schnitzler was not present during the latter part of this meeting.

MR. SPRECHER: The observations are well taken there, Mr. President.

THE PRESIDENT: Very well. We will correct the index accordingly.

MR. MINSKOFF: May it please the Court, at the present time I would like to merely mark the next exhibit for identification. It's NI-12071, as Prosecution Exhibit 1457 for identification.

DR. VON KELLER: Dr. von Keller, counsel for the defendant von Schnitzler. I believe that I must object to the admission of this document which in itself neither concerns me nor my client. I must even object to its admission for purposes of identification. It's only a photo, but there's no certification attached to it regarding its origin or authenticity. It isn't recognizable how these photos can be connected with the subject of this trial.

THE PRESIDENT: It isn't necessary to devote any time to this matter now. The Prosecution has merely identified the document, and counsel for the defendant is certainly correct in making an objection. The objection is in the record. We will meet the issue if the Prosecution asks to introduce the picture in evidence. Thank you.

MR. MINSKOFF: May it please the Court, the next document appears in Document Book No. 75. This is already Exhibit 1419, previously introduced by the Prosecution.

THE PRESIDENT: Perhaps you had better give the NI number.

MR. MINSKOFF: It's NI-9542.

THE PRESIDENT: And it bears what exhibit number, please?

MR. MINSKOFF: 1419.

THE PRESIDENT: Thank you.

MR. MINSKOFF: That appears in Document Book No. 72. The documents, if it please the Court, which will presently be introduced in evidence in this book are concerned no longer with the foreign workers, both free and forced, but more particularly with the concentration camp inmates themselves who are employed at I. G. Auschwitz and who lived in the Kanowitz Lager.

On page 10 and 11 of the English and 13 and 14 of the German, in

the affidavit of the defendant Ambros it's stated:

"The I.G. supplied Menowitz with food. Savelsberg was responsible for food supplies to Menowitz. The cooking was done in Menowitz, under I. G. supervision. From the charts which Walther Duerrfeld had made on the food rations and which also covered food for inmates, I saw that each of the inmates received at least 1500 calories."

"In the winter 1942/43 I once went through Menowitz and inspected the billets and the sick wards there. Menowitz was not a free camp. Electrically charged barbed wire, watch-towers, SS-guards were part of the camp makeup. The cost of building Menowitz amounted to about five million Marks, which were paid by I. G. They were put down as credits, as usual. This credit was discussed by the TEA. No objection was raised by the TEA concerning the erection of Menowitz."

Further on page 11, page 15 of the German, he states:

"I several times watched the inmates when they marched out of the I. G. plant at Auschwitz."

The Prosecution now offers NI-11139 as its Document 1458. This is a meeting of the 21st Construction Conference and your attention is called to page 22 of the English and 21 of the German where it is stated:

"Duerrfeld reports on matters pertaining to the entire staff. As a result of the drive in the Government Generals, 700 men were brought in. There are not sufficient guards for the allocation of any more prisoners. The demands of the concentration camp for the equipment of the prisoners' camp are most extensive. In order to prevent the spreading of contagious diseases, the SS will be notified immediately that the I. G. itself is taking over the feeding of the inmates in camp IV in order to prevent the carrying in of diseases through the transport of provisions from the concentration camp."

On page 23 of the English and 31 -- I am sorry -- that is now covered and would burden the record. The Prosecution's next document is merely offered for identification pending a decision of this Tribunal

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with respect to affiants who are deceased. This is offered as Prosecution Exhibit 1459. It's NJ-6190, marked for identification.

The Prosecution offers XI 4822 as its Exhibit 1460 and calls the Court's attention to page 41 of the English, 59 of the German, where the witness states:

"After three weeks, on 23 December 1942, my father, his two brothers and I were sent to Block II of Labor Commando IV. We were quartered in the special concentration camp of Monowitz. Conditions were unbearable. In each room, three-tier wooden frames - set up in rows - contained approximately 300 persons. It was almost impossible to breathe. We had to get up at 4:30 A. and at 5:15 we had to line up for marching to our place of work. It took three quarters of an hour to march to our place of work. On the first work day - the day before Christmas, 24 December 1942, - we had to work through until 3:00 A., 25 December, without food. Our work consisted of unloading boxcars, iron poles and bags containing cement, as well as heavy ovens. The bags with cement, for example, weighed 50 kilograms.

"On 5 January 1943, my father was already weakened to such an extent that when we had to drag such a 50 kilogram bag at doubled pace he collapsed before my very eyes. I wanted to help him but was beaten with a stick by an SS-man and was pushed back. My father was no longer able to rise and he was carried to the camp by his comrades. My father was so weakened not only because of the work which surpassed human strength, but also because, not being used to that heavy type of work, he had been beaten constantly by the guards and this most severely on the last day."

The prosecution now passes to Document XI 4830 and offers it as its Exhibit 1461. The Court's attention is drawn to page 43 of the English, 62 and 63 of the German where the witness states:

"The prisoners were pushed in their work by the Kapos, foremen and overseers of the I. G. in an inhuman way. No mercy was shown. Thrashings, ill-treatment of the worst kind, even direct killings were the fashion. The murderous working speed was responsible for the fact that while working, many prisoners suddenly stretched out flat,

turned blue, gasped for breath and died like beasts.

"It was forbidden for us other prisoners - and among us were many physicians - to help another prisoner.

"It was no rare occurrence that detachments of 400 to 500 men brought back with them in the evening five to twenty corpses. The dead were brought to the place of rollcall and were counted as being present."

The prosecution offers its next document, NI 11696, as Exhibit 1462. This is an affidavit of a British prisoner-of-war, as distinguished from the inmate affidavits, and the Court's attention is called to pages 48 and 49 of the English, and 71 of the German, where the witness, referring to the Monowitz concentration camp, states:

"There I found wooden beds, three tiers high. These beds, which would not have been comfortable even for one person, had to accommodate two or three inmates. As a result, it was practically impossible to sleep since, if one man was in a reclining position, the others would have to sit up or lie over him. I remained in a sitting position the whole night and was dead tired. Each one could get a little sleep if they changed position, but if the slightest noise was made, the guards would come in. The tiers of beds were lined up and down the whole room. In the middle, there were about three tables where they would fight to get their bit of soup. They got their soup in the evening and nothing else. This particular night, it was potato soup."

The Court's attention is called to pages 52 and 53 of the English, 74 and 75 of the German. It's 53 of the English and 75 of the German, where the affiant states:

"Unlike the British prisoners, who were mistreated only occasionally, the inmates were mistreated all the time. They were beaten on the slightest provocation and often without any provocation at all. One time I saw several civilian employees of the Farben firm beat six

inmates while they were working in the factory, while three or four other civilians looked on. They beat them with pieces of iron and wood for not doing their work properly. They were beaten badly and left to lie on the ground. I complained to the German officer who visited the camp and told him that it was upsetting the morale of the British prisoners of war. He said that the inmates deserved it and that if they did not get beaten, they would be hard to control."

The prosecution offers NI 11693 as its Exhibit 1463 and calls the Court's attention to page 59 of the English, 78 of the German. It's page 57 of the English, if Your Honor please. The affiant states:

"Of course, the Jews were treated the worst of all. They were all inmates of the concentration camps and were dressed in striped pajamas which were made up of rags and patches, and for shoes they had wooden clogs, and sometimes rags around their feet. Some used rags for gloves. Their clothes were torn and filthy. They were in terrible condition. They were all skinny and not physically fit for the work they were forced to do."

The Court's attention is called also to page 60 of the English, 81 of the German, where the affiant states:

"The biggest reason for the frequent beatings of the inmates was that they didn't work hard enough. Actually, they didn't have enough food or strength to work any harder. They all tried. They were too frightened not to try, but they could never keep the impossible pace set for them by the Germans and when they staggered or slowed down or collapsed, they were beaten."

The prosecution offers NI 11694 as its Exhibit 1464 and asks the Court's attention be drawn to 63-64 of the English and pages 84-85 of the German, where the affiant, another British prisoner-of-war at I. G. Auschwitz, states:

"The condition of the Jews, whom we called 'stripes' because of the striped pajamas they used to wear, was very poor. These pajamas, which were practically their only clothing, were made of a

material which resembled sacking. They had no socks and wore wooden clogs instead of shoes. In the wintertime, some of them would have striped coats made of the same material. These clothes were never enough to keep them warm in the winter months. They would die of exposure. I would see the dead every day. From those which I alone witnessed, there were about five a day dying of the cold. There must have been many others from the rest of the factory."

THE PRESIDENT: Pardon me, counsel. Pardon me for interrupting you. The defendant Kugler is excused and he will be waited on outside. (Defendant Kugler left the court room.)

You may go on.

MR. WINSKOFF: We are reading from page 86 of the German where the affiant states:

"From what I saw, I would say that a reasonably healthy inmate, arriving in the month of October, could not hope to live through the end of the winter."

Further, on the same page, he states:

"Also the treatment of the inmates was definitely bad. They would be murdered in the streets in the factory grounds. I have seen the bodies themselves, hundreds of times. Moreover, I have actually seen the murders being committed on four or five different occasions. The Farben civilians would never stop or attempt to prevent the SS or Kapos from beating or killing the inmates. As a matter of fact, they would often help them."

The next document appearing in the index, Your Honors, which has already been introduced in evidence in this book as Exhibit 1453, is NI 11705 and no further comment will be made with respect to it.

The prosecution offers NI 7184 as prosecution's Exhibit 1465.

DR. NELTE (Defense Counsel for defendant Hoerlein): Mr. President, the Document NI 7184, which is now being submitted by the prosecution, is somewhat unusual and I should like to ask you to look at page 4 and 5 of this affidavit, page 4 and 5 of the original, and which

begins with the words:

"The first letter reads as follows:"

up to page 5, where it says:

"Although we knew at Konowitz, from hearsay, that Block 10 in Auschwitz was reserved for experimentations, these five letters were the first written evidence I had of experiments on human beings."

I request that this part of the affidavit be rejected as evidence if the prosecution insists to present this part of the affidavit. The witness, as you will see on page 4, quotes five letters. The affidavit reads, and I quote:

"The first letter read as follows----"

In other words, the witness does not say that he quotes this letter from his memory, but he says that the wording, as he repeats it here, represents the content of the letter verbatim.

Your Honor, we are here concerned with a very unusual procedure. We are concerned with the alleged purchase of five hundred women in the concentration camp Auschwitz for the purpose of human experimentation. The I. G., as I assume, the Firm Iayer, "Baer" as it is called here, is alleged to have bartered about the price. Instead of 200 marks they only wanted to pay 170 marks.

Your Honor, you will see that this is something very unusual and something highly improbable if one does go into the buying and selling of women for purposes of human experiments, but if you look at the fourth letter, you will find that this is quite impossible. I beg your pardon, I mean the fifth letter. There it says:

"The tests were made", and that refers to the 150 women who were delivered. And then it goes on to say:

"All subjects died. We shall contact you shortly on the subject of a new shipment."

Whoever attended the Medical Trial here, and whoever experienced these terrible experiments in the various medical blocks of the concentration camps, knows that 100% loss of human subjects, a 100%

mortality of human subjects, never occurred and never was possible, even in the case of the most serious and difficult experiments. The percentage was, to a greater or lesser degree, small, but if one even tests a sleeping drug, as one can see here from these letters, a drug which has been tested on principle which excludes even the possibility of death occurring then you must arrive at the conclusion that such a letter can never have existed. At least, not with this content.

And now please be good enough to read the last paragraph of this affidavit, the last sentence of this paragraph where it says:

"No doubt by writing to the Russian authorities you....", meaning the interrogator, "...can trace Captain Kounine and eventually the letters which I translated for him."

No doubt this is a proper statement of the witness and I am quite convinced that the prosecution hastened immediately, after the 5th of July, 1947, to write to the Soviet authorities, and I ask you, Your Honor, to ask the prosecution what the reply was they received from the Soviet authorities. I believe that the prosecution, as long as it has the possibility to submit the verbatim copy of these letters - either the original or a verbatim copy of these letters - should not refer to the testimony of an affiant as it is the case here. If, therefore, the prosecution should not be able to prove that it was impossible to get these letters from the Soviet authorities, then I ask you to sustain my objection and strike the content of this affidavit and reject it as being inadmissible.

THE PRESIDENT: Can the prosecution give us a very brief statement of its position with respect to the admissibility of the parts of the affidavit that are the basis of the objection?

MR. WINSKOFF: Yes, Your Honor.

At the outset, I might mention that it's a bit unfortunate that the objection comes at this point. That portion of the affidavit would have been before Your Honors again in connection with three full document books on medical experiments. It is sort of out of context

here. It was brought in primarily for the conditions at Monowitz.
It would have been seen in the light of the entire picture of medical
experimentation where it would have reintroduced with the document
books that deal solely with medical experiments.

THE PRESIDENT: If you think that the materiality or competency
of this part of the affidavit would better come later when you are
presenting another phase of the case, why could not that part of it
now be stricken out and then reoffer your entire document as another
exhibit in connection with the pertinent matter and we will have the
whole issue before us at the proper time?

MR. LINSKOFF: That is perfectly all right, Your Honor.

THE PRESIDENT: Is that agreeable to the prosecution?

MR. LINSKOFF: Yes, Your Honor.

THE PRESIDENT: Is counsel for the defense satisfied with that
solution for the time being?

DR. WEITZ: Yes, Your Honor.

THE PRESIDENT: Very well. Then the Tribunal will consider as
stricken out from this exhibit, for the time being, all parts of the
document referring to the translation of the five letters. Otherwise,
the document is admitted in evidence.

The Tribunal will now rise for its afternoon recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal would like at this time to draw the attention of Counsel to the matter of the appointment of the commissioner to hear evidence as to such witnesses as may be from time to time directed by the Tribunal. Yesterday we filed with the Secretary a statement of Dr. Fried who was named as commissioner in the Order. We should like to inquire of Counsel if any member of the Defense Counsel had any reason to believe that any of the statements made by Dr. Fried in the letter to the Tribunal with reference to his connections or associations with these Tribunals is untrue, or whether the statement is incomplete in any respect of which Counsel has knowledge.

DR. GIERLICH: Gierlich.

Mr. President, Dr. Boettcher today at the end of the morning session received the statement of Mr. Fried from the Secretary-General and as he told me, he sent it to be translated immediately. Dr. Boettcher intended to discuss it at five o'clock this afternoon with the rest of the Defense Counsel and to inquire what his colleagues think about it. I believe that the majority of the Defense Counsel present are not yet informed of the contents of Mr. Fried's statement, and I would appreciate it if the Tribunal would be willing to have the Defense comment on the statement tomorrow morning.

THE PRESIDENT: That is a very reasonable request. Certainly we wish you to know about the contents of the statement before we ask you to make a commitment. We shall take the matter up at the tomorrow morning session at which time we should like to be advised on behalf of all Counsel for the Defense as to whether any member of the staff has any information or any reason to believe that the representations made to the Tribunal by Dr. Fried are inaccurate or incomplete. We should at the same time like to be advised on behalf of all Counsel for the Defense as to whether any member of the staff has any further information than that which was stated when the objection was made relating

to the fitness of Dr. Fried to serve in the capacity of a commissioner for the Tribunal. The Tribunal is anxious to resolve this matter and to have a commissioner acting as soon as possible, and we shall pass it at this time until tomorrow morning at which time we shall call it up and ask you to give us such information as you may have with respect to his fitness to serve in this capacity.

Does the Prosecution have anything to say?

MR. SPALCHER: Mr. President, the Prosecution at noon mentioned that there were three witnesses available concerning the Auschwitz complex in this case. We have just been informed that a car which the Prosecution sent to Prague has brought back the affiant Schulhof (S-c-h-u-l-h-o-f) who gave an affidavit which is before Your Honors as Exhibit 1452; that is Document NI-7957, appearing in Book 74. The book has been before the Defense for some time.

Now, we are drawing up one of the formal notices concerning Schulhof this afternoon, as we are required to do under the Uniform Rules of Procedure. We would like to put Schulhof on the stand tomorrow and we would first like to ask the Defense if, in view of the fact that they have had Document Book 74 and Schulhof's affidavit for some time, they would waive the requirement of twenty-four-hour written notice which, under the Uniform Rules, the Prosecution is required to serve upon the Secretary General of these courts.

THE PRESIDENT: In view of the fact that counsel for the Defense have had the affidavit, the Tribunal would not regard the failure to give it twenty-four hour notice as of very much importance or significance. Of course, rules of procedure and practice should be followed except under unusual circumstances, but, after all, they are rules of procedure and practice, and not directly related to substantive rights.

The Tribunal would regret the necessity of delay because of the failure of a few hours or a day to run on this notice.

Is there any objection on the part of counsel for the Defense to hearing this witness tomorrow, if he is available?

DR. MALTE: I believe, Mr. President, that the Defense has no objection, because this morning Schulhof was announced as a witness, so that this observes the twenty-four hour time period.

MR. SPALCHER: Someone was apparently more efficient than I had believed, Mr. President, and thank you very much, Dr. Malte, for pointing this out.

THE PRESIDENT: We take it that Counsel for the Defense would not only waive it, but is helpful in making suggestions as to procedure. That is fine. When do you wish to call this witness then?

MR. SPEECHER: We will call him tomorrow morning--either as the first or second witness, Mr. President.

THE PRESIDENT: Now, what is your situation for the balance of the day?

MR. SPEECHER: Now, Mr. President, we would like to ask the Tribunal to go over until tomorrow because, due to difficulties such as I have just suggested with respect to transportation of these witnesses, both Mr. Minskoff and Dr. Newman find themselves in the position of having had the witnesses arrive around half an hour ago, and the witnesses are tired, and it is not exactly a propitious moment to call them. We hesitate to go on further with documents because the Defense has indicated that going forward with some of these documents offers some problems. Mr. Minskoff also has not had as much opportunity as he would like to go forward.

I think the whole Tribunal would be in a better position if we could go over until tomorrow morning, and go forward with witnesses.

THE PRESIDENT: The schedule under which we operate, of running until four-thirty, is another rule of procedure which we ordinarily hope and expect to follow.

Is there any objection on the part of counsel for the Defense to recessing at this time under the circumstances that the Prosecution has stated? The President hears no such objection.

Now, gentlemen, seriously, we are very anxious not to waste any more time by early adjournments than is absolutely necessary, but we do realize--as, after all, you do--that in cases of this magnitude some problems of this kind occasionally arise.

We think the request of the Prosecution is reasonable, and we appreciate the cooperation of Counsel for the Defense.

The Tribunal will now rise until nine-thirty tomorrow morning.

(The Tribunal adjourned until 7 November 1947, at 0930 hours.)

Official Transcript of the American Military
Tribunal No. VI in the matter of the United States
of America, against Carl Krauch, et al, defendants,
sitting at Nurnberg, Germany, on November 7,
1947, Justice Shake presiding.

THE MARSHAL: Persons in the Courtroom will please find their
seats.

Military Tribunal VI is now in session. God save the United
States of America and this Honorable Tribunal.

There will be order in the Court.

May it please Your Honors, all defendants are present in
the Courtroom except defendants Ilgner and Kugler.

THE PRESIDENT: The defendants Ilgner and Kugler will be excused
from attendance today in accordance with the prior understanding.

The Tribunal suggested last afternoon that we would like to
take up this morning the matter of the Commissioner heretofore
appointed by the Tribunal, and at this time, we should like to ask
for commitments from the defendants as to whether or not counsel
know of any reason why the statement of facts as to Dr. Fried's
connection with or the agency order which it operates are incomplete.
We should also like to know whether counsel know of any other facts,
or have in mind any other facts or circumstances which in the judg-
ment of counsel tend to disqualify Dr. Fried acting as Commissioner
to this Tribunal. We will afford you an opportunity to make your
comments on those subjects at this time, if there are any.

DR. BOETTCHER: Your Honors yesterday afternoon we were re-
quested to comment on the question addressed to the Defense, whether
the objections expressed on Tuesday, the 4th of November, to the
appointment of Dr. Fried as commissioner are maintained and I shall
comment as follows:

The defense has read the letter of Dr. Fried to the Tribunal,
of the 4th of November, 1947, ~~carefully~~. They observed that Dr.
Fried did not mention in this letter, (a) that in connection with

the unsworn statement of Rudolph Hoess, Volume 67, page 49 of the German text, Document NI 4434, Exhibit 1293, and Exhibit 1294, and (b), in taking down an affidavit in Book 75, page 60 of the German text, add vouching for its authenticity, he has been active in at least two instances for the Prosecution in this case.

In the opinion of the defense, this activity of Dr. Fried, makes it impossible for him to act as a Judge for this trial. In the name of all of the Defense counsel, however, I have been asked to state the following on the basis of a discussion yesterday afternoon among the Defense counsel.

Ordinance No. 7, Article 5 (e), provides for the appointment of an officer by the Court to carry out duties assigned to him by the Court, including the taking of evidence as Commissioner. On the other hand, however, Article (4d) of Ordinance No. 7, guarantees the basic right of every defendant to be personally present at his trial, so far as this affects his interests.

From this point of view the defense has carefully considered the practical execution of the decision of the Tribunal. The Defense has come to the following conclusion, which I should like to report to the Tribunal.

The witnesses who are now to be examined will, for the most part, be witnesses on Count III of the indictment. This Count III contains extremely serious charges on the basis of the assumption of the conspiracy, which is maintained by the Prosecution. These charges are directed against all of the defendants. Therefore, in the opinion of the defense, the defendants cannot be denied the right to be personally present at the examination of all witnesses on Count III.

At the very least, however, these defendants claim the right to be present whose names are mentioned reportedly in the Document books on Count III. Therefore, this situation, in the opinion of the Defense, would result in the dilemma that either all of the defendants or a part thereof, would have to be present at the examination of witnesses by the Commissioner

while on the other hand, it would simultaneously be necessary for them to be present in Court, since during the examinations carried out by the Commissioner, subjects will no doubt also be discussed in Court which affect these defendants. The Defense, therefore, believes it is its duty to point out this circumstances which we believe makes it impossible to carry out the decision of the Tribunal.

As a further practical point, I take the liberty of pointing out the following in the name of the defense. The duty of the Commissioner in the opinion of the defense involves the execution of judicial functions for we must expect, in the course of the examination of witnesses, that objections may be raised by the Defense and by the Prosecution, objection on which a decision must be reached.

It is not quite clear to the Defense, how this decision is to be made in practice. In the ruling of the appointment of the Commissioner, the Tribunal said that it would reserve for itself the decision of legal questions arising from the examination of these witnesses; that would mean that such an objection, if no agreement of the parties could be reached, would be submitted to the Tribunal for decision. That means that at least part of the examination would have to be repeated before the Tribunal.

Here again the Defense sees a difficulty which must not be underestimated for the practical execution of the decision of the Tribunal. What I have just said, applies also, for example, to the submission of documents in cross-examination. I have taken the liberty of pointing out first the great practical difficulties in the execution of the decision of the Tribunal. In addition to these, however, the defense considered it necessary to preserve the basic rights of the defendants, briefly to set forth the legal points of view of the Defense on this question.

The Defense, with all due respect, should like to submit to the Tribunal that in its opinion, quite aside from the provisions of Ordinance No. 7, the examination of witnesses by a Commissioner who is not a member of the Court, is a violation of the basic principle that the evidence must

be given directly, a principle which exists in the law of all civilized nations.

In the present case, the Defense should like to bring forward this principle with special emphasis, since we are dealing here with extremely serious charges, and since, therefore, the immediate impression of the Court concerning the credibility of the witnesses, may be of great significance. This personal impression is lost if the witnesses are examined by a Commissioner who, as I have said, is not even a member of the Court, and is not familiar with the subject matter of the Trial.

The Defense knows very well that in the IMT trial, witnesses were examined by Deputy Judges. The basic difference between that trial and this one was, however, that this procedure was used only in the trial of the accused organizations, not in the trial against accused natural persons. The accused organizations, involved a great number of hundreds of witnesses so that this was a special case, and did not involve a determination of individual personal guilt of the defendants.

THE PRESIDENT: I should like to very briefly comment on the remarks of counsel for the Defense, and then afford my Associates an opportunity to do likewise. Then ask your indulgence for a moment, perhaps, to indicate the views of the Tribunal as a whole, with respect to this subject.

All of Counsel must be conscious of the obligation that rests on this Tribunal to expedite this trial. That is a direct and express responsibility that we are not at liberty to ignore. It must also be apparent to counsel by this time that the progress thus far made clearly indicates a very prolonged proceeding. It was to obviate what experience has already demonstrated to be true, that we were prompted to take the action taken.

I should like to correct one misconception that occurs to me with respect to the observations of counsel for the Defense. The Tribunal does not regard the Commissioner provided for in its order as a Judicial Officer. The Tribunal is not undertaking to delegate judicial responsibility to a Commissioner. We regard the Commissioner as a ministerial officer entrusted by a specific and limited order of this court, with a very narrow responsibility, leaving the judicial responsibility unimpaired before this Tribunal.

Now as the Tribunal has considered and weighed this matter, we were confronted with one of two alternatives. Counsel for the Defense suggested one of the possibilities and that is to adjourn this Tribunal for some considerable period of time, and the individual members of this Tribunal act as Commissioners, with judicial responsibilities, which in practical effect would mean that we would resolve ourselves into four units for the hearing of this large

volume of evidence.

The Tribunal thought, and yet thinks and hopes, that it may continue to think that it would be better to delegate limited and carefully divided administrative responsibilities to a Commissioner than to impose a heavy burden on counsel for the Defense and Prosecution alike, of having to arrange their schedule so as to attend four simultaneous hearings in this building conducted by four individual members of this Tribunal. Perhaps we should have taken you further into our confidence and pointed out those matters, but we did try to bear in mind the particulars that counsel mentioned in his presentation a few moments ago, and that is that these defendants do have substantial, basic rights, and that it is the direct responsibility of this Tribunal to protect those rights independent of the responsibility of counsel for the Prosecution or the Defense. It was, therefore, our judgment that we could best do that by appointing a ministerial officer with no judicial responsibilities further than to take and report the evidence to the Tribunal. That is on the merits of the order, which has already been entered and with respect to which the Tribunal is not yet ready to withdraw the order.

Now as to the matter of the appointment, I may say to counsel that the Tribunal found itself in somewhat of a delicate and unhappy situation with reference to naming a Commissioner. Technically and theoretically, it would be difficult for the Tribunal to suggest any person as a Commissioner who did not have some direct or indirect relationship to this Tribunal or to the Agency, - the administrative agency under which the Tribunal operates.

It was our judgment that in view of the limitations

imposed upon the Commissioner, that Dr. Fried was in a position to discharge his oath to act fairly and impartially. If we accede to the objections that have been made against him, we would no doubt be confronted with another comparable situation. In other words, we have a limited personnel from which to make a selection. The Tribunal knew nothing of any most remote relationship of Dr. Fried to this case, or any other agency at the time the appointment was made.

When the objections were made in the Courtroom we called the matter to his attention and asked for his comments. He furnished us with a written statement which we have filed and made accessible to you. It was only our purpose this morning to afford counsel a further opportunity to point out any further facts or further objections that they might have to this appointment.

As President of the Tribunal, I may say that we are committed to the necessity of providing some means of expediting this case. We thought the method that we had suggested would be more acceptable to all of you, than for us to individually undertake to act as Commissioners and impose upon you the burden of attending perhaps four Tribunals operating concurrently in this building, but one or the other of those alternatives appeal to us, as being positively necessary.

I think that is all by way of general comments that I wish to say, but I do want at least to afford my Associates on the Bench an opportunity to supplement what I have said, or to say what they may wish to say on their own individual responsibility, with respect to this matter.

Judge Morris.

JUDGE MORRIS: Thank you, Mr. President, and very

briefly: Control Council Law No. 7, vests in the Tribunal the power to appoint a Commissioner to take testimony. That is a definite allocation of power in the Tribunal by an ordinance under which we operate and by which, in a general way, we are governed.

Further than that, a Tribunal of this type, at least in my own individual opinion, has the inherent power to appoint a Commissioner to take testimony. You may have noted my emphasis on the "taking of testimony". That does not include the judicial function of making findings of fact, or determining questions of law. Those matters are for the Tribunal, and the Tribunal anticipates that it will perform those duties itself and to the utmost.

Under the practice here documents of many types are admissible in evidence, affidavits and counter-affidavits are admissible. All that being in nature similar to the testimony that would be reported to us through the Commissioner, so I cannot see any valid objection, either legal or practical, to following out the same policy under which this trial has been conducted from the beginning, and having some more of the testimony submitted in documentary form through the written reports of a Commissioner, the results of which merely bring to his attention and to the record of this Tribunal, the written testimony of witnesses, and it is my idea that the designation of the power in Control Law No. 7 is strictly in accordance with the entire theory of the conduct of these Tribunals, and rests in this Tribunal a discretion to appoint a Commissioner, and by proper and appropriate orders, allocate the work that it may desire to the Commissioner, and determine his activities through those appropriate orders.

Now as to the appointment of the Commissioner and the individual who has been selected by this Tribunal, I am unimpressed by the objections that have been made to him. It does not appear that he has acted in a capacity which would prejudice or bias him in sitting as a Commissioner and taking the testimony under conditions which result in the ultimate submission to the Tribunal of everything that the Commissioner has done.

There is nothing in any of his activities, so far, that indicates any prejudice on his part or bias in favor of the Prosecution or against the Defense. It is merely the broad statement that at some time in the past he has acted in taking oaths, perhaps submitting interrogatories, to some witnesses. He has not testified in any manner in this proceeding, or as far as I know, in any other one, merely his acts have been in a nature that are entirely compatible with the duties that we would impose upon him in selecting him as a Commissioner of this Tribunal and directing him to act further in the taking of testimony.

It would, therefore, seem that the order of this Court, as a matter of power, is unassailable. We do have the authority to appoint a Commissioner, and that in the exercise of that power that we have undertaken so far, we have exercised a reasonable discretion. As from time to time an occasion may arise the Tribunal will further exercise its discretion in determining just what work may be allocated to the Commissioner, and if it appears that that work will interfere with fundamental rights of the defendants in this case, no doubt our discretion will take such measures, and only such measures that may not violate these fundamental rights in our best judgment.

Thank you, Mr. President.

JUDGE HEBERT: I fully concur with the views which have been expressed by my two colleagues. They have covered the subject completely. It seems rather obvious that the legal objection has been made to the plan of appointing a Commissioner, if it is to be followed, would have the effect of reading out of Military Ordinance No. 7. The express authority which is given for the appointment of a commissioner to take testimony, and, certainly if any case would justify the exercise of that power and authority, I think we are confronted with that situation in this case. I merely want to add to what my colleagues have said to this extent. I think that the Tribunal in entering the order was motivated in large part by a desire to provide a machinery which would protect and leave unimpaired an opportunity for a very full cross examination of all affiants whose testimony has been introduced in written form in the case. A great many of those affiants the Tribunal has heard in person and intends to hear others in person. The Tribunal proposes to exercise a very sound discretion in determining which matters will be heard by the Commissioner and which should be heard by the Tribunal in person, having in mind that we desire in every way possible to protect the substantial rights of these defendants.

I also concur in what has been said with reference to the qualifications of the individual named in the Tribunal's order. We do not believe that it has been shown that he is not properly qualified to perform functions which, in their essence, are ministerial in character, do not include expressing any opinion upon the weight of the evidence and if in the connection with the taking of any testimony by the Commissioner objection should be sustained by the Commissioner there will be ample opportunity to have that reviewed by the Tribunal itself.

THE PRESIDENT: Judge Merrell.

JUDGE MERRELL: I think it would be solely a waste of time for me to make further comment. All I need to say is that I fully concur in what has been stated by each of my colleagues on this question.

THE PRESIDENT: The Tribunal has now had an opportunity of hearing an expression from counsel as to the propriety of the order and the qualifications of the Commissioner named in the order. Counsel have had the opportunity of a full expression from each member of this Tribunal. Under these circumstances it would not appear to be necessary to extend this consideration of this subject. The Tribunal now announces that it will stand by and confirm the order appointing a Commissioner in this proceeding and will overrule the objection to the Commissioner named in the order. We reserve to ourselves the matter of when and to what extent this facility may be utilized by the Tribunal. In whatever instances witnesses are referred to the Commissioner we shall consult counsel and provide you an opportunity to point out wherein a hearing before the Commissioner involving your clients may interfere with their rights. By that, I meant to say if a situation arises where a Commissioner hearing will interfere with the attendance of a defendant in this trial, we shall undertake to work out with you in such a way as not to work any hardship on counsel or deny substantial rights to any defendant. We shall consider that matter now finally closed. May I direct your attention to another subject?

The Tribunal has had under advisement the objections of the defendants to the introduction in evidence of the following Prosecution Exhibits: 1178, NI-4446; 1179, NI-4969, 1180, NI-6737; 1181, NI-6667, 1182, NI-4975; 1183, NI-4972, 1184, NI-6735 and 1185, NI-4974 contained in Prosecution Book 63 and also Exhibits 15, NI-4971; Exhibit 1186, NI-6736; 1187, NI-7468, and 1189, NI-4960 in Book 76. It will be recalled that these exhibits related to the so-called "Russian Aspect" of the Prosecutions case. There may be an error in the enumeration of the exhibits involved. If there is, we should like to afford you an opportunity at the conclusion in this announcement to correct the list of the exhibits. We have taken them from our desk memorandum. The Tribunal now announces its ruling on said objections.

There is contained in Count V of the indictment a charge of conspiracy to commit crimes against peace. The prosecution has not yet offered its evidence specifically designed to sustain that charge. The rules as to the competency of evidence to establish conspiracy are quite broad. Under these circumstances the Tribunal is unable to say at this time that the exhibits objected to may not have some probative value in establishing that charge, when considered in connection with other evidence relating to that object. Having reached the conclusion just stated it is unnecessary to consider whether the exhibits are competent to establish any of the other charges contained in the indictment nor do we express any opinion as to what weight, if any, should ultimately be attached to said exhibits. The objection to the introduction of the exhibits enumerated in this ruling are now overruled by the Tribunal.

Now, if there is any correction in the list of exhibits embraced in this ruling we shall be glad to have you point it out to us at this time or to call the matter to our attention subsequently. We think counsel for both sides are fully advised of the scope of this ruling in so far as it relates to this group of documents. The President may have committed an error in the listing of the documents or may have omitted one that should have been embraced in it, but we shall assume that this ruling covers all of the documents within the category of the objection. I am further authorized by the Tribunal to say that the Tribunal has decided upon principle that the affidavits of deceased, heretofore offered in evidence will not be admitted in evidence in this proceeding. For the information of counsel, we reserve the right at a subsequent in this proceeding. For the information of counsel, we reserve the right at a subsequent session, perhaps today, to state to you definitely and concretely the reasons for our ruling. We announce it now because of the fact that in the presentation of the documents yesterday and subsequent to the original objection we observed that a number of documents marked for identification only that raised the same

question as that embraced in the objection. The ruling of the Tribunal is that that the objections to those documents where the affiants were deceased, and, consequently, not available for cross examination will be sustained and we shall state on the record a little later the reasons for our views on that subject.

DR. SILCHER: Silcher. Mr. President, what I have to say is, first, to the ruling you have just announced on the Russian documents. If I remember correctly, when the objection was raised the Prosecution did not offer the documents individually. I believe that this will have to be done in view of the possibility that there may be objections for other reasons against one on the other of these documents.

MR. SPECHER: In my opinion, Mr. President, Dr. Silcher is entirely incorrect. The Prosecution offered of these documents as it went along, after there had been at some point in the early offering a statement by counsel for Dr. Ambros that he thought the probably would enter an objection later or wanted to indicate to the Court that there was a problem. There was no formal objection made until the time your honors decided for the time being you would hear nothing further but all the documents, up to the time that the objection was made were certainly offered.

THE PRESIDENT: It's the recollection of the Tribunal that the Prosecution offered a number of these documents in Book 64 but that a number of them were not offered after the objection was made. Is that correct, Mr. Prosecution?

MR. SPECHER: Yes, Mr. President. If that's what Dr. Silcher was referring to he is indeed correct. I misunderstood him then.

THE PRESIDENT: I think the statement is correct. Certainly, counsel, there's no disposition on the part of the Tribunal to deprive the defense of the opportunity of making objections on other grounds to these exhibits and under the liberal policy that we have followed as to those that have been offered in evidence, if you have objections other than those with respect to which we have now ruled and will call the matter to our attention within a reasonable time we will afford you that opportunity. We shall likewise afford the prosecution an opportunity to complete the presentation of its documents on this subject. We shall appreciate the co-operation of counsel in keeping our record straight on those subjects. The Prosecution need not do that this morning. You can do it at a subsequent session and the same privilege will be extended to the defense.

DR. SILCHER: Mr. President, the matter has been clarified now. My colleagues told me that I was thinking about some other documents which have not been offered at all yet. I beg your pardon for wasting time.

MR. SPRECHER: If we may, your Honors, we would like only briefly to refer to you our plan in view of these rulings.

THE PRESIDENT: It's the appropriate time to do that right now.

MR. SPRECHER: At our next full session on Wednesday the Prosecution will complete the offering of the documents which are relating to the topic which previously has been under consideration with respect to the activities of these defendants in planning for spoliation in Russia and then I might also suggest at that time, with your permission, we introduce the documents in, I think, Document Book 66. It's a very small Document Book which contains

some further certificates with respect to the positions which these defendants held in the economic, social and political life of Germany. These will be in Supplement No-II. The materials that have already gone in on that subject are in Document Book 11.

THE PRESIDENT: Is that Document Book in the possession of the Defense now?

MR. SPRECHER: It has been, I think, in the possession of the Defense and the Tribunal for several weeks.

THE PRESIDENT: I know we have it but it occurs to us that is a matter that ought to be pretty much the subject of a stipulation. In otherwords, to go through those documents and to enumerate the positions held by these defendants would take a good deal of time that ought not to be necessary, it seems to us. If counsel for the defense can go through the books and the affidavits as they apply to their clients, if you find any errors in them perhaps you can suggest them to the Prosecution and adjust it and the matter then can resolve itself to a mere matter of marking the books. That, after all, is only a listing of the positions the defendants held. Isn't that true?

MR. SPRECHER: Yes.

THE PRESIDENT: Very well. We suggest that as a matter of a time-saver I might say to you that the more time you save the less time you gentlemen will be called upon to attend the Commissioner's sessions.

MR. SPRECHER: Mr. President, in that connection I can say that our object in connection with the offer of those documents will merely be to give them exhibit numbers because the index at the front of the book, is somewhat inaccurate in that it tells you about those documents and places them in specific places in Document Book 11. I don't think it ought to do that. But I might indicate to

you with regard to what defendant and what place you should consider the document in connection with the documents already in Document Book 11, so, there would be no point in our stating anything further in that connection. Then, after we have presented the documents in those two connections we would probably next week go on with witnesses. We have given the official notice; I believe, in most cases we did give each of the defense counsel notice that we feel that we can give under the difficult circumstances save of scheduling witnesses. At this time we would like to call our next witness.

THE PRESIDENT: Just one more moment; we should afford counsel for the defense an opportunity of making any announcements now or calling our attention to anything you think should be called to our attention.

DR. BOETTCHER: Nothing at the moment. The defense has nothing to say at the moment, Mr. President.

THE PRESIDENT: The Prosecution may call its next witness.

DR. SEIDL: Dr. Seidl, for the defendant Duerrfeld. Mr. President, some time ago the Prosecution offered an affidavit of Oswald Pohl. This is Exhibit 1292, Book 67, Document NI-382. It was announced to the Defense some time ago on the black-board that this witness would be called by the Prosecution for cross-examination. I would like to have a brief statement from the Prosecution as to when we may expect this witness to be called. The reason is that this witness is at the present time still in Nurnberg. He is in the prison here, but we must expect during the course of the next week he will be removed from Nurnberg. I wanted to bring this fact to the attention of the Prosecution. If the Prosecution, however, should decide not to call this witness for cross-examination I should like to make

application now that this exhibit be stricken from the record.

THE PRESIDENT: That Exhibit is an affidavit and the prosecution may be expected to call the witness unless the cross-examination is waived. Now, it's a matter of time. You gentlemen ought to be able to confer informally and reach an understanding which would give you the information you would like. Does the Prosecution have anything to say on that at this time?

MR. SPRECHER: I think we will be in a position to make a fairly clear statement about it at the beginning of the first one or two days of next week.

THE PRESIDENT: Very well, Call your witness.

MR. SPRECHER: Before I call the witness, who will be Jan Dvoracek, I might mention several things to your Honors. The Pohl affidavit in question is Exhibit 1123 and is in Document Book 54, English Page 124 and German 187. We have been advised by the witness that he somewhat reluctantly will agree to speak the German language here today but he wanted to make a short statement about the question to your Honors and, I might say, that the German oath is familiar to him so I would suggest that you use this German oath.

THE PRESIDENT: What's his nationality?

MR. SPRECHER: His nationality is Czech.

THE PRESIDENT: Is it your information that he does speak German?

MR. SPRECHER: Yes, he does speak German but he wants to make a short statement about it.

THE PRESIDENT: Bring in the witness.

JAN DVORACEK, a witness, took the stand and testified as follows:

THE PRESIDENT: The witness will remain standing for the purpose of being sworn, raise his right hand, say "I" and state his name.

THE WITNESS: I, Jan Dvoracek -

THE PRESIDENT: Now repeat after me:

Swear by God, the Almighty and the Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath).

The witness may be seated.

Just be seated.

MR. SPEECHER: Mr. Witness, the Prosecution understands that you would like to make a brief statement to the Tribunal with respect to your ability to speak the German language. Would you continue?

THE PRESIDENT: You may say what you have in mind to the Tribunal.

THE WITNESS: Your Honors, I beg to allow me a short statement. I would like to testify in my natural Czech language. Because of the difficulties of the interpreters not familiar with all the different technical expressions from Czech into English language to find, I have decided this my decision to abandon, and, for these technical reasons, to testify in German.

THE PRESIDENT: Does the witness understand and speak the German language?

THE WITNESS: Yes.

THE PRESIDENT: Do you feel that you would experience any difficulty in clearly expressing yourself in German to a German?

THE WITNESS: It is not my mother tongue, but I have a command of this language and if I should get into any difficulty to find an expression I will say so.

THE PRESIDENT: The witness need not have any apprehension about the translation facilities. We have a staff of very fine and competent translators who can convey what you say in German to us in English.

However, we wish to be assured that, in ordinary conversation between you and another person who speaks German, that you can fairly express yourself in German. What do you say on that subject?

THE WITNESS: Yes.

THE PRESIDENT: Then you need have no worries about the language. The translators will take care of the matter of getting your testimony to the Tribunal. We neither understand German nor Czech, but the translators will be responsible for seeing that we get a fair English translation of what you say. If you will just remember the admonitions that were given to you before you came in, with respect to the lights in front of you and to talk slowly and deliberately and to pause between questions so that the translators have an opportunity to translate your evidence, we'll get along very well.

The witness is with the prosecution.

DIRECT EXAMINATION

BY MR. SPEECHER:

Q Mr. Dvoracek, how old are you?

A Sixty.

Q Are you retired at the present time?

A Yes.

Q And what is your present address?

A Prague.

Q What was your address in 1939?

A Prague.

Q What was your position in the years 1938 and 1939?

A From the 1st of July 1938 on I was Oberdirektor of the Zivnostenska banka (Zivno Bank) in Prague. Before that, I was Deputy Oberdirektor of this bank in Prague.

Q For how many years had you been deputy chief manager?

A About six years, and before that, about five or six years, I was director.

Q Now, how long did you remain Oberdirektor or chief manager

of the Zivno Bank?

A. Oberdirektor of the Zivno Bank from the 1st of July 1938 to June, 1945.

Q. Now, you have before you a copy of an affidavit you gave to representatives of the Prosecution?

A. Yes.

Q. Your Honors, I just might point out that the original of that document that is before us was made in the German language, so the witness has before him a copy in that language.

Is that correct, witness?

A. Yes.

Q. Mr. Dvoracek, before you made this affidavit, did you discuss the topics taken up in the affidavit for some time with representatives of the Prosecution?

A. No.

Q. The affidavit was made after some interrogations, some informal interrogations on very short notice, with the Prosecution. Is that correct?

A. Yes.

Q. Now, since that time have you had a more reasonable opportunity to check the detailed matters in your affidavit?

A. Yes. I made three statements, but I can confirm that everything contained in these statements is reproduced accurately in this document.

Q. Now, do you have any additions or corrections which at this time, after the passage of several months, you would like to make in order that this affidavit show the full and complete truth as you now understand it?

A. Yes, a few minor matters.

Q. Will you try to point those out to the Tribunal by the paragraph number and by the sentence within the paragraph?

A. Yes. On page 2, paragraph 4, page 1 of the English, the

second line from the bottom, it says: "About three-fourths of the turn-over of that time," I believe it would be more precise to say "of the balance figures of that time."

Also, in paragraph 5, the sixth line, I said: "Farben Director Ingler from Frankfurt Main became interim administrator, commissar." I have to add: "and director Brunner of the Falkenau factor of the Prager Verein."

On page 8, paragraph 14, page 5 of the English, line 5: "Only Rasch, Dr. Rasch, Dr. Mueller and myself represented the Verein." Really, to be very precise, I should have said: "There was also Dr. Froiss present at the first meeting in November, in the morning."

Otherwise, I have nothing to add.

Q. There are no further questions on direct examination.

THE PRESIDENT: The Defense may cross-examine the witness.

CROSS-EXAMINATION

BY DR. HENZE (Defense Counsel for defendant Ingler):

Q. Mr. Dvoracek, in your affidavit, under paragraph 3, you made general statements regarding the relationship of your firm, the Verein for Chemical and Metallurgical Production, with the I. G. Farben Industry. In regard to that I should like to put a few questions to you.

You said that the Verein and the I. G. were competitors. You furthermore say that the Verein and the I. G. frequently had disputes. I should like to anticipate a remark which you will find on the next page where you say that the Verein was a burdensome competitor of the I. G.

Do these remarks refer to the field of dye stuffs?

THE PRESIDENT: You may answer the question when you can, Witness.

THE WITNESS: Yes, I said here, in paragraph 3, that I. G. Farben and Verein were competitors. In my opinion, and according to my experience from my work in the Verein, that corresponds absolutely to

the facts. I was vice-president of the Verwaltungsrat of the Verein, on the basis of the participation of the Bank which I represented there.

THE PRESIDENT: Mr. Witness, please. Now please try to remember the admonition of the Tribunal. Answer your question briefly, and if counsel wants further information, he can ask it.

BY DR. HENZE:

Q. Witness, you answered this question with "yes". Another question. Were these normal disputes as they usually take place among competitors, or did they go beyond normal disputes?

A. As far as I know and as far as I was informed, because these discussions were conducted by the General Director, these constant disputes were especially severe in the summer of 1938. I remember that very well, on the basis of the information from the then General Director, Dr. Rasch.

Q. Witness, do you know that, in the field of dye stuffs with which we are dealing at present, the I. G. was not directly competing with the Verein, but that there were cartel associations to which French and Swiss dye stuff producers were affiliated?

A. Yes, I know that, and I know that the General Director had constant negotiations on the subject, and my remark that particularly in the summer of 1938 these negotiations were especially critical, I remember that very well.

Q. Witness, these were the negotiations of the so-called Tripartite Cartel?

A. These negotiations were with I. G. Farben. I never participated in negotiations of the Tripartite Cartel, but I know of negotiations with I. G. Farben. Whether they were preparations for the Tripartite Cartel, I don't know.

Q. You were just speaking of negotiations in June 1938.

A. Yes, in Dresden, if I am not mistaken.

Q. Do you know that in the case of these negotiations we are concerned with regular negotiations of the Cartel?

A. I don't know because I wasn't present at these negotiations myself.

Q. In that case you can neither tell me whether these difficulties only limited themselves to the I. G., or whether they extended to the other partners of the Cartel also?

A. I heard only of the I. G. That I. G. was very severe in the summer meetings in 1938.

Q. But you only gained this knowledge from what your colleagues told you?

A. Not from what my colleagues told me, but from the reports of Dr. Basch, who was General Director. Reports which he made to me as vice-president of the Verein and member of the executive committee of the Verein.

Q. At any rate, not from your own knowledge?

A. No, not from my own knowledge. I was not present.

Q. Mr. Dvoracek, under paragraph 4 of your affidavit, you say that the business policy of the Verein, before Munich, was not to sell any factories. May I ask you, at what period of time a change of this policy came into being?

A. This happened after the Munich Dictate when the Sudetan territory was torn away from the Czechoslovakian Republic.

Q. Do you know, witness, that the Prager Verein had shares in Germany?

A. Yes.

Q. Do you know when these participations were liquidated by them?

A. I do not know what shares you are talking about. The Verein had several interests in Germany. In part, they were sold earlier, and some were sold only during the war. The shares which were sold earlier, were sold for purely commercial reasons because, from the point of view of business considerations, they had become uninteresting to the Verein.

Q. Thank you.

A. In any case, that is not in contradiction with my statement because the factories which the Verein sold before the war, were sold only in Germany and on a voluntary basis.

Q. Witness, you misunderstood me. I didn't want to find a contradiction. I just wanted a supplemental explanation from you.

If I am informed correctly, you then established contact with Ruetters, that is Dr. Mueller, who was a friend of yours. Let me ask you, when did you establish contact with Dr. Mueller with respect to the future fate of the plants of Aussig and Falkensau?

A. I can tell you the following on that question. Dr. Mueller

of the Reuttgers Werke was contacted by Dr. Basch after Munich. I cannot tell you exactly when, but it was in October, 1938. Dr. Basch had a basic discussion with Mueller regarding an arrangement with the Reuttgers Werke concerning the Aussig and Falkenau plants.

Q. Witness, can you remember where these negotiations with Dr. Mueller took place?

A. No, I was not present. Dr. Basch did that. Afterwards he informed us - that is, the administration - and we agreed that we should have discussions with Dr. Mueller. Dr. Mueller came to Prague about the end of October and talked to Dr. Basch, to me, and to the late president of the Verein, Dr. Preiss. He said that he would obtain the approval of the Reich Ministry of Economics for the arrangement with the Verein, and we agreed that we would reach a basic agreement. We did not have any concrete negotiations.

THE PRESIDENT: Mr. witness, you have already answered the question in about the first sentence, the Tribunal thinks, so just wait now for another question and make your answer just to the point and stop when you made it. Counsel is unlimited in his privilege of asking his questions, and he will ask you if he wants any further information.

Go ahead.

BY DR. HENZE:

Q. Witness, you just said that you were not present during these negotiations, but that the management of the Verein reported to you. If I tell you that negotiations with Dr. Mueller had taken place in Aussig and Prague, would you then remember a little more and could you perhaps tell me whether that is true?

A. I know nothing about negotiations in Aussig. I don't know which negotiations in Prague you are referring to. I know only of a discussion that I had with Dr. Preiss and Mueller. It was a fundamental discussion.

Q. Dr. Mueller, before this Tribunal, has told us that the first negotiations took place in Aussig.

A. I cannot say that this was impossible, if it was with Dr. Basch, but I do not know.

Q. Were the gentlemen, Dr. Basch and Preiss, after the Munich Agreement, after the occupation of Sudetenland, once more in Aussig?

A. That is quite impossible for Dr. Preiss because no Czech could go to Aussig. It was possible for Dr. Mueller because he was a German and it was possible for Germans.

Q. Mr. Dvoracek, you just said that you reached a basic agreement with Dr. Mueller.

A. I did not say that I had reached a basic agreement with Dr. Mueller. I have said that we had had a basic discussion with Dr. Mueller.

Q. What were the suggestions which were discussed between your gentlemen and Dr. Mueller?

A. I know of no concrete suggestions. I know that Dr. Mueller had asked that the Verein should make a general arrangement with the Ruettgers Werke on the basis of the participation of the Verein in some form in order to continue to operate jointly the Aussig and Falkenau plants. In some form. It was not discussed in what form.

Q. Mr. Dvoracek, in your affidavit you say, however, that at one time a basic agreement was reached with the firm of Ruettgers, but at another place you say that negotiations went on with Dr. Mueller about the selling of Aussig and Falkenau to the Ruettgers Werke plant.

A. I can only repeat that we had a basic discussion with Dr. Mueller and that we were later to make an arrangement with the Ruettgers Werke concerning Aussig and Falkenau, on the basis of the participation of the Verein. We did not go any further than that, but we did demand that Dr. Mueller should get the approval of the Reich Ministry of Economics.

THE PRESIDENT: Counsel, this would be a good place to pause for our morning recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

BY DR. HENZE:

Q Mr. Dvoracek, if I understood you correctly, you were not present in the negotiations with the Ruettgers firm, but you derived your information from the business management of the Verein which was known to you as a member of the Verein's board and reported to you as a member of the Verein?

A Yes, as a member of the Verwaltungsrat board, member of the executive committee and vice-president.

Q Quite independent from the fact that you were not an immediate participant in this conversation, I do unfortunately have to ask you something about it since the Prosecution called you as a witness in this question. According to the information which the administrators of the Verein gave to you, Mr. Dvoracek, did the negotiations between the Verein and Ruettgers remain only in an initial stage?

A Yes.

Q The directors of the Verein, you said, hoped that Dr. Mueller would get the approval of the Reich Ministry of Economics?

A Yes, because he asserted so himself.

Q One thing isn't quite clear to me, Mr. Dvoracek. If the firm of Ruettgers asks for permission to carry out a certain transaction, it had to describe the nature of this transaction very much in detail to the Minister of Economics so that that authority could express its point of view, and for that reason I should like to ask you once more whether perhaps you remember that the responsible persons of the Verein brought the negotiations to a considerable degree of definiteness and reported it to you?

A I have already told you, Doctor, that these negotiations were in the beginning stages. Dr. Mueller said that he had obtained approval. I cannot tell you more.

Q Did the gentlemen from the Verein not tell you for what transaction the approval had been granted?

A Not only the men of the Verein, but Dr. Mueller was in Prague personally and told me and Dr. Preiss that he had to get the approval of the Reich Ministry of Economics.

Q Mr. Dvoracek, in connection with point 5 of your affidavit I have a few questions. I am concerned with the fact that my client, Dr. Eugler, and Herr Brunner became commissars for Aussig-Falkenau. Do you know who appointed these commissars, these administrators?

A The competent German authorities.

Q It was a measure of the German Reich then?

A Yes.

Q Did I understand you correctly that in the case of Dr. Brunner he was an employee of the Verein?

A Yes. He was the former director of the Falkenau factory.

Q Is it correct, and are you informed, Mr. Dvoracek, about the fact that the management of the Verein before the arrival of the German troops sent Herr Neumann, an employee of the Verein, from Prague to Aussig in order to safeguard the interests of the Verein during the occupation?

A I do not know.

Q You don't know Mr. Neumann?

A I cannot say exactly. After all that was ten years ago. It may be if I see him that I would remember him, but I don't remember now. I do know the name, but I don't remember what he looked like.

Q Under number 7, Mr. Dvoracek, you say that the management of the Verein in Prague was cut off from every personal and written intercourse with the factories in Aussig and Falkenau. Did you want to express by that that that was a measure of the administrators, or was that a military measure in the course of the occupation by German troops?

A I believe it was both. Primarily, of course, there were the military orders. The administrators applied that all along the line.

Q You don't know that the administrators didn't have any

possibility to get in touch with Prague?

A I don't know.

Q Do you know that after the decision of the German authorities in this area had again made possible a traffic between this region and Prague, the administrators took up connection immediately with the management in Prague and that they expressed their desire to hold a joint conference?

A Yes, I know that. I remember exactly that director Kugler came to Prague, but I do not know when that was. There was a long period of time between the occupation and his arrival in Prague.

Q Do you consider the 25th of October as correct for the probable date?

A I could not say. I couldn't take any notes during the War, and I would be saying something that I would not be certain of.

Q But if the date were correct, which I ask you to assume, then it is a considerably short period of time that lapsed between the German occupation and the appointment of the administrator and the visit which took place on the 25th of October?

A I cannot say because I do not know. I can say nothing about the date.

Q Then I should like to go a little farther in this matter, Mr. Dvoracek. Two discussions took place in Prague in the course of which Dr. Kugler discussed with the management of the Verein all pending questions. I assume that you are informed about that?

A Yes, although I cannot remember the details.

Q Were you present at one of these conferences, or discussions?

A In part I believe, yes, because it took place in the bank.

Q Do you remember, Mr. Dvoracek, that after Dr. Kugler had rendered his report and had answered in detail questions about sales of goods, the delimitation of sales organizations -- after all, these questions had been discussed -- the chairman, Preiss, expressed his satisfaction about this enlightenment by saying approximately these

words to Dr. Eugler,

"You may have acted sometimes very ruthlessly, but at all times you acted very correctly?"

A I cannot remember the words. You are asking too much of me after sixteen years.

Q Please excuse me, Mr. Dvoracek; you didn't say it yourself, but you might have heard them. Then the chairman, Preiss, made another statement which I should like to tell you about, and perhaps you heard it. He said approximately the following to Dr. Eugler:

"You see, I am an old man who weathered various political changes since 1914. Let me give you some fatherly advice. Don't accept such an ungrateful position ever again." Mr. Dvoracek, I had hoped that this remark which, after all, was a little outside of the scope of the usual might have stuck in your memory somewhat. Is that the case?

A I do not remember it, but it is quite possible that Dr. Preiss said that.

Q If Dr. Preiss said it then it would be an indication of the fact that Dr. Kugler led the administration in a very objective manner.

A I cannot -- just --

THE PRESIDENT: Just a moment --

THE WITNESS: It was an administration by a commission --

THE PRESIDENT: Counsel, that assumption is the ultimate that the Tribunal would have to conclude. I think you are making --

DR. HENZE (Counsel for defendant Kugler): I ask your pardon, Mr. President, for anticipating that.

THE PRESIDENT: Very well.

BY DR. HENZE:

Q I now turn, Dr. Dvoracek, to another point. Under No. 9 you say, "shortly after this agreement in principle had been reached with the firm of Ruettgers, Herr Zinsser, manager of the Dresdner Bank in Berlin came to my office, and this was the beginning of the negotiations between the Verein and the Farbenindustrie and von Heyden Chemical Industry."

Can you tell me when Mr. Zinsser appeared in your office?

A I cannot give you the exact date. I do not have any notes; it was probably about the end of October.

Q This stage, if I understand you correctly, comes after the negotiations had taken place with Dr. Mueller?

A Yes, the discussions with Dr. Mueller.

Q The management of the Verein at that time was already willing to meet the state of dimers in which it found itself because of the political changes and to separate itself from the plants in Aussig and Falkenau?

A One cannot say that. The management of the Verein, in accordance with the situation, wanted to make arrangements with Ruettgers but did not want to divide itself.

Q Mr. Dvoracek, may I then say something about the purchase price which you report under No. 16?

Do you remember what price had been asked for by the management of

the Verein in the course of these negotiations?

A The negotiations followed each other too rapidly, and we figured with different figures at the time because all that took place in the course of one day, actually, as far as I remember Dr. Bosch said four hundred millions crowns, and from the I. G. I remember two hundred million crowns, and I can tell you quite frankly today we expected that the negotiations would lead to between three hundred and four hundred...

Q You don't know that a price of three hundred million crowns had been introduced into this conference by the management of the Verein?

A Certainly not. This price was brought into the debate too, at a more advanced stage of the negotiations. It was the kind of negotiations popularly called "horse trading."

Q But such "horse trading" always takes place, doesn't it? For in general the purchaser is interested in buying things cheap and the seller wants to sell it for as high a price as possible.

A Yes, but a purchaser of the character of the I.G. knew the price and the value of the plants exactly.

Q Mr. Dvoracek, you say in your affidavit that proof for the fact that the purchase price was too low can be seen from the fact that the buyers insured the plants with a value of 553 million crowns, which was twice the amount by them.

This fact was only became known after the liberation of Czechoslovakia, you say.

May I ask you the following, in this connection. Do you know that the insurance policies which the management of the Verein took out were taken over by the buyers and kept in force for a number of years without any change?

A No, I do not know that, but may I say if I give this figure I was quite aware that in this insurance of the factories Aussig and Falkenau, the real estate and everything under the ground was not included. I do not want to go into technical figures, but I heard from the experts that if we had included the land we would have come to a figure which we

had better not discuss at all.

Q Yes, Mr. Dvoracek; you say, unfortunately, that you are not an expert. I consider that a pity.

May I then, however, understand your statement to the effect that others reported to you about the sums of insurance and that you, yourself, did not investigate the matter?

A That was not my department within the Verein, to test such matters. We had specialists for that purpose, but I did know how factories were insured, and what is insured and what is not insured, in spite of the fact that that belongs to the price. If I had put this figure in my affidavit, though, it probably would have been two - or three hundred million crowns more.

Q Then you don't know either that the buyers, after the war had already progressed rather far, had concluded a new insurance?

A I don't know.

Q But this can only be this new insurance here concerned, since at that time the old insurance in Reichenberg was still in force -- but you don't know that?

A No, I do not know that.

Q Perhaps you can answer two more questions in this connection, Mr. Dvoracek. Do you know that the value of the insurance has no relation at all to the sales value, and the value for taxation, and the value on the books.

A Yes, I know all that.

Q Then you probably know that in central Europe -- where the same practice exists because of these similar insurance laws -- an insurance value for the insurance could, is generally assumed, which approximates the price of the purchase again? The price of procuring these installations, once more?

A I cannot say anything about these technical questions.

Q I ask your forgiveness, Mr. Dvoracek. I shall discuss this at another occasion for the benefit of the Tribunal.

DR. HENZL: I have no further questions in this connection.

THE PRESIDENT: Continue with the cross examination, please.

DR. LUMBERT (Counsel for Dr. Kuehne): Mr. President, may I put two short passages from the affidavit of the witness, and a few questions?

BY DR. LUMBERT:

Q. I shall read, first of all, a few lines from the affidavit, NI-9632, the German Document Book 54, page 187; and the English Document Book page 124, in the middle. I quote--

THE PRESIDENT: Would you mind giving us the paragraph number?

DR. LUMBERT: That is paragraph 3, Mr. President.

THE PRESIDENT: Thank you.

BY DR. LUMBERT:

Q. "Before Munich, Farben and the 'Verein' competed with one another.

In some fields, especially in that of dyes, there existed cartel agreements. I do not know the details since they belonged to the competence of Dr. Basch. But I do know from reports of the Direktion that Farben and the 'Verein' frequently had great disputes. We guarded our independence with greatest care."

And then I shall read two or three lines from page 188, which is in the English on page 125, at the top, in paragraph 5: "Especially in the field of dyes, the Verein had been a troublesome competitor to Farben."

Mr. Witness, may I ask you whether you know that already in 1924, the Carb-Union Gesellschaft was founded by Dr. Max Mayer, the then General Director of the Prager-Verein, by Dr. Petersen for the Metallgesellschaft and by Dr. Hans Kuehne, one of the defendants here, for Farbenindustrie? Do you know that?

A. I could not know that. In 1924 I had nothing to do with the Verein; I entered the administration of the Verein in the year 1932.

Q. Then may I ask you, did you learn in the years to follow, since 1932, anything about this Gesellschaft Carb-Union?

A. Carb-Union?

Q. No; you might call Carb-Union a coal syndicate.

A. Carb-Union?

Q. C-a-r-b-Union.

A. Yes, I heard about it, but I don't know any details.

Q. Perhaps you know the purpose of this foundation of Carb-Union by the three enterprises was to promote the production, the sale, and the application of activated coal for technical and medicinal purposes, and that for that purpose frequent inspections of the plants of the three enterprises took place every year?

A. I do not know that because I did not deal with the current business of the Verein, but I know that it was a sales company for activated coal.

Q. Do you know that cooperation between Prager Verein and Farben took place in this field?

A. Not only in this field but, as I say in my affidavit, in other fields as well. But I said —

Q. That is enough for me, Mr. Witness. May I ask you further: Do you know then that in almost all branches of production of Prager Verein there was an active cooperation between the I.G. Farbenindustrie and the Prager Verein, particularly promoted and favored by the close friendship of Dr. Max Mayer and Dr. Kuchel?

A. I dealt with the Verein primarily when Dr. Basch became the General Director of the Verein.

Q. Witness, I should like to put an affidavit to you in order to assist your memory somewhat. At this time I ask the Tribunal to admit the document Kuchel Number 1, as an exhibit in evidence. These are two affidavits connected with each other of the person Dr. Max Mayer, the former General Director of the Prager Verein, who now resides in the State of New York. The document is in the English language in the original.

Since I heard that the witness can speak German better than English, I should like to read a few lines to him in the German. During the recess

I gave copies to the interpreters in the English and German languages.

THE PRESIDENT: Now, Counsel; please. You have two matters before the Tribunal. You first said that you were offering the affidavit. Perhaps that had better not be done. We will consider it identified as your client's Exhibit 1, for purposes of identification only at this time. But you may refresh the memory of the witness, if you can, from the affidavit which has been marked for identification.

Then you may decide later and take up with counsel for the Prosecution as to whether or not you wish to introduce the affidavit.

DR. LUBBERT: Yes, Mr. President. I wanted to incorporate this document anyhow later on, in my document book, and offer it as an exhibit.

To facilitate matters may I give copies of this to the Tribunal and to the Prosecution? May I then read a few passages from the original and from the translation?

THE PRESIDENT: Counsel, the Tribunal has not had an opportunity to familiarize itself with the contents of this affidavit. We have to rely upon you to tell us about it. What is troubling us is this: that, assuming and conceding that the affidavit may be proper evidence on behalf of your client, we are, nevertheless, doubtful as to how it becomes pertinent to this cross examination of this witness. We would like to be enlightened as to your views as to how you think it is ~~connected with~~ the affidavit of this witness in such a way as to make it proper at this time, rather than when you make out your defense.

DR. LUBBERT: Yes, Mr. President. The witness told us that since 1932 they had a close connection with the affairs of the Prager Verein. Until 1936 the affiant, Dr. Max Mayer, was General Director of the Prager Verein. His successor then was Dr. Basch.

The few pages of the affidavit which I would like to put to the witness, and which are marked with a red pencil on the margin, show that a very close business cooperation existed between Farben and the Prager Verein. I shall then ask the witness whether he knows that this close

cooperation also existed between Dr. Basch, the successor of Dr. Meyer, and Dr. Kuchno; And I shall then ask the witness whether he wants to change the statement in his affidavit about the harsh competition and the differences of opinion after that still.

THE PRESIDENT: Counsel, the Tribunal is definitely of the opinion that that is purely defensive. This witness has made a statement of a fact which you wish to discount or deny. Supposedly you have an affidavit from the witness Max Mayer which tells a different story. That is clearly competent evidence in this cause but it is your defense. You can in any proper way undertake to remind this witness of anything that he may know that might be calculated to get him to change his opinion, or to modify the opinion expressed in his affidavit; but you can't do that by showing your side of the case or by showing what your witness would say on the same subject about which he has testified to. Now, you can interrogate him fully about his own statement and of course remind him of things that you think he knows that might be calculated to get him to change that statement or to modify it or to recall to mind things that he may have forgotten. But when you present an affidavit of another party, then you are simply anticipating your defense and you are giving us your defense before the prosecution finishes its case, and it would be most confusing to the Tribunal and I may say to you and to your associates if we don't keep a line of demarkation between the prosecution's case and your case, just in orderly procedure. We don't think it would be proper at this time.

MR. SPEECHER: I don't know if this will help expedite matters, but the prosecution is willing to stipulate that there were, prior to 1938, fields in which there was close cooperation between the Prager Verein and I. G. Farben, and further that the defendant Kuehne was one of the persons involved in such cooperation in those fields. But we don't see how that is competent here because it is not in contradiction to anything which the defendant has said; and I might say — anticipating — what the witness has said — I think that is enough.

THE PRESIDENT: Very well. We think counsel for the defense had better stay to the affidavit of the witness and not anticipate his defense. For whatever it may be worth to you, you now have on the record an admission or a statement of the prosecution which you are entitled

to use in the continuation of your cross examination. Has the Tribunal made itself clear as to the reasons for the position we have taken?

DR. LUCERT: Yes, Mr. President. I understood what the prosecution said to mean that they admit that until 1938 inclusive there existed close business and technical connections between Farben and the Prager Verein, is that correct?

MR. SPEICHER: That is not all, exactly, we said; but I think that is part of it.

THE PRESIDENT: Gentlemen, what you said is on the record and you can appraise it yourself when you get your transcripts. Let's go along.
BY DR. LUCERT:

Q. Witness, may I ask you in what fields the Prager Verein worked together with the Ruettgers-Werke?

A. I can't tell you that. As I have explained repeatedly, I had nothing to do with the every-day business of the Verein.

Q. May I ask you, Witness, was it in 1938, according to your opinion, not quite a matter of course that Farben should interest themselves in the plants of Falkenau, since by virtue of the close cooperation then had a lot of experience to be gained from those two plants?

A. I don't know your opinion about the close cooperation. I repeat that in the year 1938 conditions had become ruthlessly hard.

Q. Then, may I ask you again, don't you know that just as between Dr. Kuehne and Dr. Mayer, also since 1936 between Dr. Kuehne and Dr. Bach, there existed very close business relations, and pleasant relations too boot, between them?

A. I believe I know that in the technical field there were good personal relations, but please ask me questions that have some connection with my affidavit.

Q. Witness, I don't think that was the right answer.

THE PRESIDENT: Ask another question.

DR. LUCERT: I have no further questions, Mr. President.

THE PRESIDENT: Any further cross examination?

BY DR. VON KELLER:

Q. Witness, please answer a few more questions about the Berlin negotiations in November of 1938 at which you yourself were present. May I ask you how long did you stay in Berlin altogether?

A. I cannot tell you exactly. I believe two or three days. And I did not have only these negotiations but other negotiations as well.

THE PRESIDENT: You have answered him. You have answered the question. Ask another.

Q. Is it correct if I say to you that on the 5th of November, that was on a Saturday, you already talked to people from Farben?

A. I don't think so. I don't think I talked to them on Saturday. I believe that the negotiations were either Monday or Tuesday, in the building of the Dresdner Bank.

Q. On Sunday, if I am informed correctly, you talked to people from Ruettgers-Merke?

A. I don't remember that. It is possible.

Q. I don't want to insist on this, but perhaps a small detail -- You were in the Adlon Hotel?

A. Yes.

Q. On Monday the negotiations then took place in the building of the Dresdner Bank or the next day. These negotiations lasted very long, is that right?

A. Far into the night.

Q. You then first submitted your suggestions and the people from Farben submitted their own suggestions, is that correct?

A. That may be. Surely! That is customary in such negotiations. I didn't make any notes.

Q. I'd like to get a picture of these negotiations. Did you then slowly approach your common point of view? You mentioned a "horse trade" before.

A. It took a long time until we began to reach an agreement. I

believe at about midnight we were not far from breaking off negotiations.

Q. Is it true that that also happens very often in the course of negotiations?

A. It does, yes.

Q. In these negotiations, you either submitted or picked your basis for calculations and Farben stated their own basis for the calculations?

A. If I remember correctly, Farben based its negotiations on the question of turnover, which is very low and not to our advantage.

Q. But, perhaps you know the fact that Farben not only in these negotiations but as a matter of principle in negotiations of such fields of production always started out from the basis of turnover?

A. I don't know that.

Q. Perhaps you still remember that the turnover in Czechoslovakia, that is in Bohemia and Moravia, should not be considered as sold?

A. Yes.

Q. Then I'd like to summarize these negotiations in order not to burden the Tribunal with further details. Were both points of view discussed in the course of these negotiations? That is, for instance, turnover, customs, tariffs, and other business aspects. Were they all taken into account?

A. We expected from the Verein that by the sale of these two factories, which represented three quarters of our balance sheet, we did not want to give up chemical production in rump-Czechoslovakia. Therefore we demanded that the sale of the products of Aussig and Falkenau be through the Verein and therefore that we demanded recognition of our future existence.

Q. Witness, in your affidavit, you state that you had already lost several plants in the southeast, and I am now looking for the number under which you say this. That is paragraph 7 on page 5. Excuse me, the plants which you would have lost. Did you actually lose these plants through these agreements?

A. We did not lose these plants through these negotiations.

Q. That is enough, thank you. Witness, I wanted to ask you as to the purchase price. Was it later found to be inadequate?

A. From the beginning we considered this price as inadequate.

Q. If I ask you now to compare the development of these stock market quotations of the Frager Verein before the invasion of this Sudetenland and the later development, is it then correct if I state that the shares of the Frager Verein rose?

A. That is the circumstance, Doctor, that I.G. Farben took advantage of the situation to get these two plants shipped. The rate was about eight hundred crowns per share at the time so that the whole thing was not worth even three hundred and fifty million crowns on the stock exchange.

Q. Witness, I merely wanted to ask you whether it wasn't true that after this transaction these shares were evaluated more highly than before the transaction took place. Is that right? Yes or no.

A. After it went on, and for the year it still went on, the stock went up because that was an effect of the general economic situation and the inflationary effect of the German war policy.

THE PRESIDENT: It is time to recess for lunch. We will rise at this time until one-thirty.

(A recess was taken until 1330 hours.)

AFTERNOON SESSION

(The hearing reconvened at 1330 hours, 7 November 1947.)

THE PRESIDENT: You may continue with your cross examination Dr. von Koller.

JAN DVORACEK - Resumed

CROSS EXAMINATION (Continued)

BY DR. VON KELLER:

Q Witness, before the recess we had been talking about the Berlin negotiations and we were mentioning the economic points of view which had to be taken into consideration with respect to the treatment of the stock exchange quotations. We then talked about the influence which political conditions can have on economic relations. In order to assure the continuity, will you tell me whether my summary is correct? I just wanted to ask you whether I repeated everything correctly.

A I did not understand what you meant, what you were driving at.

Q I merely briefly wanted to repeat the subject of our conversation this morning. We spoke about the economic basis of the Berlin discussions and we spoke about the stock exchange quotations, and then we went on to discuss the political influence on economic relations. Is that true?

A In order to show the correct effect of the stock exchange quotations.

Q Very well. I am not passing on to a new field, witness. Aussig and Falkenau were in the Sudeten German territory, were they not?

A Yes.

Q After this territory was separated, a custom barrier was erected between Aussig-Falkenau on one hand and the Prague central office on the other?

A Yes.

Q This also meant that there was a barrier between the Sudeten German market and the Czechoslovakian market?

A Yes. If there was not a customs barrier, then it amounted to the same thing.



Q What do you mean by that?

A The customs barrier came later, but you are right if you say that there was a sort of customs barrier, in that there had to be import certificates which replaced customs.

Q Am I then correct in saying that this meant that between the production site, Aussig-Falkenau, and an essential part of the market, there was an impediment of commercial traffic and the traffic of goods?

A For the moment, yes. You know, Doctor, that, against the opposition of the Czech population, in one year a customs union was established by the German occupation forces.

Q Witness, I am trying to make my questions as concise as possible so as to enable you to answer them with either yes or no. The later development of course could not have been anticipated at that time. As a businessman, did one not have to take this circumstance into consideration in the negotiations?

A Yes, but at the time when the negotiations went on conditions were not clear enough yet. They were not clear enough yet as far as the import and export traffic was concerned.

Q But was it clear that a customs barrier would exist between Czechoslovakia and the German Reich territory?

A Perhaps to the Germans. It was not clear to us. We did not know what it would be like.

Q Is it known to you that an especially high duty, according to Czechoslovakian customs, had been put on the inorganic products of Aussig and Falkenau?

A When?

Q At that time.

A I don't know. I can't remember that.

Q Let us now approach a new field, Witness. Since you yourself attended the negotiations, you may perhaps remember that part of the sale price was paid by the I.G. in goods; if I am informed correctly, the amount was one hundred million crowns. Do you remember that?

A Yes. I don't know whether it was one hundred million crowns, but in any case it was about that amount.

Q Did you not also have to take into consideration that the Prager Verein, on the basis of the delivery of these goods, could book the commercial profit on the sale of these goods?

A I do not know, how it was with the profit at that time. You know, Doctor, that there were already ceiling prices at that time.

Q Would these ceiling prices enable a profit to be made at all?

A I don't know.

Q Witness, in order to be able to conclude this chapter of negotiations, let me ask you whether these advantages which were offered to you by the I.G. and which came to your benefit in the past as well as in the future and which the I.G. could continue to offer you in the future, all of this not a point of view which influenced the negotiations?

A The I.G. endeavored to awaken this impression. I understood that very well. I was not convinced.

Q Witness, in that case, let me perhaps remind you of a letter which you wrote on the day of the conclusion of the Berlin negotiations to I.G. Farben; with respect to the settlement of the price, you said, and I quote: "We take this opportunity to state that in the negotiations and the fixing of the sale price for the plants of Aussig and Falkenau, it has been taken into consideration that approximately a third of the production of Aussig and Falkenau plants has been sold to the present territory of Czechoslovakia." Do you remember this letter?

A Yes, I remember this letter, because I know that when we signed the main contract there were also some letters drawn up.

Q Thank you. In order to explain my one but last question briefly, may I ask you to confirm the following sentence, which was included in this letter: "We heartily greet the fact that the friendly relationship prevailing up to now between our firms will be maintained in the future. It is hardly necessary for us to emphasize that on our part we shall do everything possible to continue the development of these friendly

relations." I just wanted to ask you whether you also remembered this sentence.

A Yes, I remember it, and I have something to say about it, Doctor. Two letters were exchanged at the time. We insisted that the price, which was so low, and over which we bargained, would have to be paid soon. That is why we asked our I.G. partners in the negotiations to promise that the I.G. should help us in the transfer, because when the Sudetenland was occupied, Czech property has to be sold. This was promised in a letter in which this polite formula was added at the end. In answer, we sent a letter to Farbon, and just like Farbon, we emphasized what we were interested in that is what you have just quoted in order to be certain that part of the price would be paid by deliveries in kind, and at the end there was this polite formula. I know that these letters were prepared on the same day as the big contract and some other letters, and that all these were drawn up by the I.G. If we had drawn up the letter, I think we would not have put this same formula in, although we would have had a polite formula too.

Q Witness, were you prevented from drawing this letter yourself?

A No.

Q That is sufficient. Witness, beyond that, did you not later, in collaboration with the I.G. found a new plant near Bratislava? Yes or no?

A That Bratislava factory was decided upon in the negotiations that is the Bratislava artificial fiber factory, with the participation of Verein.

Q Did the I.G. later give you a further license for the erection of plant in Czechoslovakia? Yes or no?

A That is possible, but I don't know what that would be --that would be--but I want to add something now. We all know--

Q Witness, may I ask you just to answer my questions.

Witness on the occasion of these agreements, did the I.G. in any way let you down? Weren't the obligations on the part of the I.G.

kept, which you wanted to cover, particularly by this polite formula?

A With the exception of the attempt to buy part of the stock of the Verein. That was the purpose of all these friendly formulas.

Q Witness, do you know the plant at Horstowitz?

A Yes, very well.

Q Did the I.G. help you in the case of this plant by giving you licenses? Yes or No?

A That had that obligation.

MR. SPEECHER: Just a minute, witness. Could I ask counsel to indicate how this is within the scope? It's beyond me, and I hate to object because there is always the possibility that perhaps I can't see.

THE PRESIDENT: Does counsel wish to state his position?

DR. von KELLER: Mr. President, the witness maintains that the price was unfavorable, that is, the cash price. I wanted now to show him, what was given to the Prager Verein by the I.G. over and above this cash price.

THE PRESIDENT: That would be proper. The objection will be overruled.

DR. von KELLER:

Q I think, however, that the witness has already answered the question.

A I don't know which question you mean.

Q The Horstowitz plant was operated with the assistance or support of the I.G. No, it was never operated --

Q At any rate, the I.G. assisted.

A Was supposed to give some technical assistance.

Q And did Farben not give that assistance?

A Some people were to be sent to Wolfen, but it took years.

Q But in the final analysis, this assistance was given.

A It is possible that it was years later.

Q Was the Prager Verein granted a license for work on artificial fibers?

A That is just what you were talking about, Doctor. That was the Noratowits factory. I just answered that.

Q Witness, I come to my final questions. Your Honor, would you please grant me a recess of about a minute in order to confer with one of my colleagues?

THE PRESIDENT: Very well.

BY DR. von KULLER:

Q Witness, did you ever tell Mr. Laeller of the Ruettgors Werke that the contract which you entered into with the I.G. was particularly disadvantageous to you, and did you at that time complain about the I.G.?

A I cannot remember.

Q But on the day after the conclusion of the Berlin contract, you still maintained contact with the gentlemen of the Ruettgors Werke?

A I do not know. I doubt it, unless I just happened to meet the gentlemen. I had no contact with the men from the Ruettgors Werke.

Q Witness, you said before that up to June 1945, you were a member of the Vorstand of the Prager Verein and the Zivne Bank. Is that true?

A Yes.

Q Have you now given all of your economic offices?

A I should not have to answer that question, but if you ask me that as a personal question, I will answer it: Yes, I resigned all my positions when I received my pension, because I had no offices which were not connected with the bank. If you are asking the witness personal questions, I will tell you why, although I really don't have to.

MR. SPEICHER: Mr. President, I am afraid I didn't understand the questions.

If the question was directed to the time since 1945, I object; if it was directed to the period from 1938 to 1945, I do not object.

THE PRESIDENT: Well, the question indicates that it was related to approximately the same time, and counsel for the Prosecution did go into that—as to his positions that he held — and it would seem to be proper for counsel of the Defense, within a reasonable leeway, to do the same thing.

MR. SPEECHER: I am afraid I didn't make myself clear. I was trying to find out by the objection as to whether or not the question was directed to the period before 1945 or after 1945.

THE PRESIDENT: Counsel for the Defense can answer us as to that as to which he means.

DR. von KELLER: The question refers to the residing of the witness's positions around June 1945, which is the time to which the representative of the Prosecution referred during the direct examination.

MR. SPEECHER: Well, I will object to the question. I don't see its relevance.

THE PRESIDENT: It may not be very relevant, but it is a matter that counsel for the Prosecution went into, and the field of cross-examination ought not be too narrowly limited. The objection is overruled.

BY DR. von KELLER.

Q Then you did resign all economic positions and offices in the year of 1945, yes or no?

A I told you that I gave up all my functions which were connected with my position in the bank were, because I was put on the retired list at my own request. After six years of great exertions, protecting the Czech economy against exploitation ...

Q Witness, I only wanted "yes" or "no" from you.

A If you ask me a question, then you have to give me a chance to answer it. After six years —

THE PRESIDENT: Please be as brief as you can. The Tribunal doesn't want to apply a harsh rule that you shall invariably answer "yes" or "no", but most of these questions could be answered quite briefly, and then if counsel for the Defense wants to ask you more questions or if the Prosecution thinks that the matter ought to be gone into further, they can ask you further questions. It will save our time if you answer it as briefly as you can. Go ahead and ask another question.

BY DR. von KELLER:

Q Witness, were you, since that time, ever restricted in your freedom of movement?

MR. SPEECHER: Objection. I think the purpose of the examination is very clear.

THE PRESIDENT: The Tribunal does not know what the purpose may be, but it's impressed with the thought that we can't see how that relates to anything in the affidavit or in the testimony of the witness.

DR. von KELLER: This question, I admit, does not fall within the framework of the affidavit. However, it does refer to the personality of the witness, and it does refer to the general situation under which he is giving testimony.

THE PRESIDENT: The Tribunal recognizes the rule that you may ask questions without the scope of cross examination that in your judgment affect, the credibility of the witness as a witness and the weight that we should give to his testimony. But that question, in this form, doesn't indicate to us that it does affect credibility. It doesn't suggest the scope of your inquiry. We will sustain the objection but indicate that you do have a field of examination beyond the scope of the affidavit, as to matters that you think may affect the credibility of this witness and the weight that the Tribunal should give to his testimony.

DR. von KELLER: Your Honor, the purpose of my question was to find out whether the witness, throughout the entire period since 1945, was in a state of liberty. I believe --

THE PRESIDENT: If Counsel will just ask that question, will permit it to be answered. Just ask him that, what you said.

BY DR. von KELLER:

Q Witness, since the year 1945, were you always at liberty?

A I state that I have testified today and always, quite freely, without any influence, and I also state that according to our laws and regulations, not only businessmen but persons working in business and elsewhere receive a so-called state and national reliability certificate, if they have never been accused judicially or administratively, and I have this reliability certificate.

THE PRESIDENT: Witness, please, you have forgotten our admonition. Counsel, can't you get directly into whatever you may have in your mind and ask him a direct and simple question that can be directly or simply answered, and we will try to help you get an answer of that character.

BY DR. von KELLER:

Q May I then repeat the question which I have already put to him, Your Honor? From the year of 1945 to the present time, were you always at liberty?

A Of course, I have been at liberty.

THE PRESIDENT: Wait a minute.

BY DR. von KELLER:

Q You were never arrested?

A I was not arrested. In our country --

THE PRESIDENT: You have answered the question. He asked you if you were ever arrested, and you said that you were not. That is a complete answer. Wait for another question.

BY DR. von KELLER:

Q Witness, were you accompanied to Nurnberg from Prague?

A That is ridiculous.

THE PRESIDENT: Just tell counsel whether you were or were not. If you were, admit it, and if you were not, deny it. That is all.

DR. von KELLER: I have no further questions.

THE WITNESS: Can I make a statement?

MR. SPRECHER: I am afraid, Witness, under our practice you will have to wait for a question. Just a moment now.

THE WITNESS: Could I ask for an explanation?

THE PRESIDENT: Witness, if you will just answer the questions that are propounded to you, and when the examination is fully complete and you are about to be excused, if you think that some injustice in your answer has occurred and you want to make a statement to the Tribunal, we will permit you to do it. But, please, in the meantime, just answer the questions, and we will accord you that privilege, if you still insist on it, by way of explaining your testimony, before you leave the witness stand.

REDIRECT EXAMINATION

BY MR. SPRECHER:

Q How did you come here from Prague?

A I came here from Prague in a car with some other witnesses.

Q And did anybody else accompany you who wasn't a witness?

A No, absolutely nobody, with the exception of the official from the court here.

Q That is all right. Thank you. That is, an employee of the Prosecution drove the car?

A What?

Q An employee of the Prosecution drove the car, is that right?

A Yes. No, no, no, no, no, no, no, — not an employee of the Prosecution. I don't think he had anything to do with this case.

MR. SPRECHER: Excuse me. I had assumed that the cross examination was over, and I am informed by Dr. Hoffmann that he has a question. I want to beg your Honor's pardon as well as that of Dr. Hoffmann.

THE PRESIDENT: Very well.

CROSS EXAMINATION

BY MR. HOFFMANN (counsel for the defendant von der Heyde):

Q Since the Prosecution has also accused my client under Count III, and since I don't know whether what is being testified here might be used against my client, I want to put the following question to the witness.

Witness, you have just told us that your activity as a Czech citizen during the time of occupation by the Germans was now subsequently declared as beyond reproach.

A I didn't understand you.

Q When giving your testimony, I understood you to say that your activity as a Czech citizen during the time of occupation by the Germans had now afterwards, been declared beyond reproach. I just wanted to ask you -- I don't know whether you can explain it now or not, but at any rate no charges were made against you for your activity during the time your country was occupied by the Germans. Is that right?

A I have already said that I have the state and national reliability certificate. That means that there are no charges against me, and I don't think I have to tell you anything else. In Czechoslovakia, everybody was investigated, naturally, and I was investigated, and no charges were made against me, for I have the certificate to that effect, and I am free.

Q Certainly, witness. I am not holding anything against you. I just want to get at the facts.

A But I already said that.

Q Yes. Now I am going to put another question to you. The conclusion of the agreement with the I. G., therefore, must have been beyond reproach? Just say "yes" or "no".

A Excuse me. That has nothing to do with it--with this contract or no contract.

Q I don't quite understand that, witness. You participated in the framing up of this contract, yes or no?

A I signed it.

Q Very well. Now you have been investigated and no charges were

made against you. That means that this signature could not have been interpreted as illegal.

A The questions are not as simple as that; they are a little more complicated. During the six years of occupation, we suffered a great deal from you--and I don't want to go into that.

Q Witness, I think you misunderstand me.

A I understand very well. I understood all during those six years -- and if you want to hear about that, I will tell you. Yes, we signed the contract.

Q I am not going that far at all. I know what my position is in this courtroom as a German, but you can answer my questions, can you not? The next question I am going to put to you is as follows: if you had not signed that contract, what would have happened to you?

A Who?

Q You.

A Me, personally? I don't understand your question? If I had not signed that contract, why would something happen to me?

Q Thank you. No further questions.

THE PRESIDENT: Any further cross examination? Any redirect?

MR. SPRECHER: Yes, Mr. President. Could I ask the Secretary to mark next for identification, as the Prosecution's Exhibit, the following document -- the document which I hand to the Secretary. This is Prosecution Exhibit 1467 for identification. I might point out that the document number is NI-10724.

(The witness is handed the document.)

REDIRECT EXAMINATION

BY MR. SPRECHER:

Q Mr. Witness, tell us whether or not you recognize that letter in connection with anything you were asked about by defense counsel?

A I beg your pardon?

Q Do you recognize that as -- tell us whether or not that is a letter which you were questioned about by defense counsel.

A Yes, that is the letter. That is the letter of of 7th December. That is the day when the contract was concluded.

Q Now you mentioned that --

A That is here. We confirm it.

THE PRESIDENT: Just a moment. You have answered the question. Counsel just asked you if you recognized that letter. You said that you did. That is enough.

BY MR. SPRECHER:

Q Now you mentioned during cross examination that two letters were exchanged. Do you remember whether or not they bore the same date? That is, the letter by I. G. Farben to Prager Verein bore the same date as the letter from Prager Verein to I. G. Farben?

A That is this. This is our answer to the first letter from I. G. Farben on the same date. That is the exchange of correspondence, and that is --

THE PRESIDENT: Just a moment now. He just asked you if the two letters bore the same date, and you have answered that they did. Now, just wait a minute.

BY MR. SPRECHER:

Q Mr. Witness, were those drafts exchanged before they were sent?

THE PRESIDENT: Wouldn't it be simpler to ask him what was done with the letters? I am afraid that is rather confusing.

MR. SPRECHER: Yes, I am afraid it is, Mr. President, I am sorry.

BY MR. SPRECHER:

Q Mr. Witness, at the President's suggestion, I am going to rephrase my question. Tell us how those letters happened to be exchanged on the same date, 7 December 1938?

A I believe that was all about the signing of the contract, and the letters were written there, on the basis of the discussion.

Q Mr. Witness, I won't interrupt you until you have read the whole letter. I realize that you haven't seen it for a long time. Please read it.

(The witness reads the letter.)

Q Have you completed?

A Yes.

Q Tell us whether or not these two letters were drawn up after negotiations under the circumstances were completed and before you left Berlin?

A There are two parts to this letter. The first paragraph, the long one, contains the desiderata which we set up and which we were very much interested in. The second paragraph contains the friendly, the polite formula. It was probable that that was written in the I. G. Farben office because that shows the politeness that I. G. always displayed outwardly toward us. That is the only way I can explain it, because the letters are of the same date.

THE PRESIDENT: That is an answer.

Q Now, we had one other question with respect to Herr Bruner, the other commissioner who was appointed by the German authorities after the seizure of the Sudetenland. Do you know whether or not Bruner was declared a so-called "Volksdeutsche" by the German authorities after they came into the Sudetenland?

MR. SPRECHER: Well, I think it's re-direct, Mr. President. The defense apparently had very good reason to bring out the fact that Bruner was a former director of the Aussig Verein, and they brought that point out. I want to indicate —

THE PRESIDENT: Very well.

MR. SPRECHER: —why this particular man, whose name is very German — sounding, was selected. That is my purpose.

THE PRESIDENT: Well, it's pretty far afield, I think. Well, go ahead and ask the question. Perhaps there's some merit in it; I don't know.

MR. SPRECHER: Did you get my question, Mr. Witness?

A Whether Director Bruner was a Volksdeutsche. I know that Dr. Bruner was of German nationality. I assume, but I don't know for certain,

that he was a Czech citizen. I don't know.

THE PRESIDENT: I think that's an answer.

BY MR. SPRECHER:

Q All right, Do you know whether or not Bruner was a director in 1938, at the time he was made commissar by the Germans, or not?

A I think he was already a director when the Germans invaded Czechoslovakia.

MR. SPRECHER: No further questions.

THE PRESIDENT: Is there any further cross examination?

MR. SPRECHER: I have one thing -- I would like to offer the exhibit I marked for identification.

THE PRESIDENT: Is there any objection to the admission in evidence of the document marked for identification by the Prosecution?

DR. VON KELLER: Your Honor, counsel, for the Prosecution is just showing me the exhibit. May I comment then?

THE PRESIDENT: Very well.

DR. VON KELLER: Your Honor, I have no objection to the admission of this letter for purposes of identification. I should like to have permission to put some questions to the witness.

THE PRESIDENT: Just a moment, now; if we may, let us get the record straight on that document. Now, what's the number of that document? Its exhibit number?

MR. SPRECHER: 1467.

THE PRESIDENT: The Prosecution has asked to introduce in evidence this document which has been marked for identification 1467, as a part of its re-direct examination. There being no objection to it, the document is admitted in evidence, and the Prosecution will be expected to furnish copies to counsel and the Tribunal. You may proceed with your cross examination.

RE-CROSS EXAMINATION

BY DR. VON KELLER:

Q Witness, do you say that this closing formula which you call a polite formula was drawn up by the gentleman of I. G. Farben?

A Most probably.

Q Do you still maintain this assertion if I now tell you that this letter which was just shown to you was drawn up by Mr. Basch, one of the gentlemen of the Prager Verein?

A I doubt it, because Dr. Basch had a different style. That's my impression.

Q But you have no exact knowledge?

A We were interested in the first part of the letter, our desiderata, and it was my impression.....

THE PRESIDENT: Witness, counsel is not asking about the contents of the letter. He is just asking you if you knew who drew it up, and he suggested to you that possibly Dr. Basch drew it up. What do you know about that? Tell him what you know about that, if anything. If you don't; say so.

A I don't know.

Q No further questions.

THE PRESIDENT: Any further cross examination? (no response) Now, Mr. Witness, this Tribunal is only interested in the answers that you make to questions that are propounded to you. Counsel for both sides have now announced to the Tribunal that they are through with you. Before we excuse you, I want to give you an opportunity to correct or explain any answer that you have made. That's due you. The Tribunal is not interested in any other statement, but if you have conveyed a wrong impression of fact in your testimony to the Tribunal and will now very directly and briefly point out the correction that you want to make, we will afford you that opportunity.

THE WITNESS: As to the cross examination of the last two defense counsel, I should like to say the following: in our country persons who held high positions during the war have been investigated for their conduct during the war. I have also been investigated, and after six terrible years of German occupation no charges were made against me. If I appear

here personally as an unreliable witness -- I regret that these words were used. If these words were used, I have to add some details.

THE PRESIDENT: That is enough. The Tribunal thinks you are entitled to say that you have been investigated under the circumstances, and that no charges are preferred against you. Your words are recorded in the proceedings of this Tribunal. We think that will suffice, and you are now excused from further attendance of this trial, and the Marshal will escort you away. That's all. Thank you.

THE WITNESS: But I would please like to say two words so that there will be no doubt. Please, Mr. President?

THE PRESIDENT: Very well. What are they?

THE WITNESS: The only administrative procedure against me was completely stopped because the investigation revealed that my conduct had been perfectly all right. I was never arrested.

THE PRESIDENT: Just a minute. The Tribunal can well understand the fact that Just a minute. Let me talk a minute. The Tribunal well understands that you do not want a wrong impression to be conveyed that there was anything here reflecting upon your integrity or character. No one made an attack on your integrity or character, and so far as the Tribunal stands your record is clear, and you will now be excused. Is that sufficient?

THE WITNESS: Thank you very much, Mr. President, but permit me to ask you something. I don't want the gentlemen who attacked me today to accuse me of having concealed something.

THE PRESIDENT: Mr. Witness, the Tribunal does not regard that any attack has been made on you. Counsel have only asked questions that they considered proper, and the Tribunal has thought they were proper, or it would not have allowed you to answer them. There is no reason for any further statement. Will you please excuse yourself from the Courtroom, and the Marshal will show you the way out. Thank you very much.

DR. HOFFMAN: Dr. Hoffman, counsel for the defendant von der Heyde.

Witness, personally I want to tell you that I in no way doubt your credibility. I am glad that you have served the truth in this Courtroom, and I want to ask you not to have the feeling that I or anyone else wanted to attack you.

THE PRESIDENT: The Tribunal will now arise for five minutes.

(The Tribunal recessed for five minutes.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Prosecution will call its next witness.

MR. SPRECHER: Mr. President, Mr. Minskoff is on the way down. We just called him for the next witness.....the witness Schulhof.....unless he is out there already, Mr. Marshal? May it please your Honors, the witness is not in the room.

THE PRESIDENT: He is on his way. Mr. Prosecutor, while we are waiting you might be able to tell us where the affidavit is found. Can you? Or are you waiting for that information, too?

MR. SPRECHER: Mr. President, I am afraid I can't. It's on the Auschwitz.....

THE PRESIDENT: We will wait a moment.

(Mr. Minskoff appears.)

Are you ready to call the witness now?

MR. MINSKOFF: Yes, your Honor, I would like to make a correction. The witness is Arnost Tauber and not Schulhof that's being called at this time.

THE PRESIDENT: Just a moment. Give the name of the witness to the Marshal now and we will have the witness called.

MR. MINSKOFF: Arnost Tauber.

THE PRESIDENT: Now, while he is coming in will you give us the book and page reference to the affidavit?

MR. MINSKOFF: In Book 74, Prosecution Exhibit 1455, NI-4829.

THE PRESIDENT: Mr. Witness, you will now remain standing for the purpose of being sworn (The witness having been produced by the Marshal.) We understand you are a citizen of Czechoslovakia. I should administer you what I understand to be the form of oath that obtains in your country. You will raise your right hand, say "yes" and state your name.

ARNOST TAUBER, a witness, took the stand and testified as follows:

A. Yes, Arnost Tauber.

THE PRESIDENT: You will now repeat after me:

"I swear the pure oath that to all questions asked here before the Tribunal, I shall answer only the truth, nothing but the truth and that knowingly I shall withhold nothing."

(The witness repeated the oath.)

You may be seated, Mr. Witness, has the use of the signal lights on the witness stand been explained to you by anyone?

THE WITNESS: Yes.

THE PRESIDENT: Then, let me admonish you further; because of the fact that your testimony must be translated into English it is necessary that you talk slowly and that you pause after a question is asked before you make an answer so that the question is transmitted

to the Tribunal first. Please bear that in mind. And one thing further; answer your questions as directly and briefly as possible.

DR. FRIBELIA: Mr. President, I am sorry that because of a technical difficulty we hear only Czech.

MR. MINSKOFF: May it please the Court, we have asked the witness, in order to expedite matters to testify in German with which he is familiar and with the oath repeated in Czechoslovakian. The witness will testify in German.

THE PRESIDENT: Very well. Mr. Prosecutor, you may proceed and if you have any difficulties on reception let the President know.

THE WITNESS: I had originally intended to speak Czech but I realized that I will expedite things if I speak in German and therefore, I have decided to speak German.

THE PRESIDENT: Do you speak German?

THE WITNESS: Yes.

THE PRESIDENT: Very well. It will simplify things so far as translation is concerned if you do speak German. We understand that you are a citizen of Czechoslovakia and that you have a language of your own, but you will serve the facilities of the Tribunal if you will speak German in this instance.

The prosecution may proceed.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q. Mr. Tauber, will you state your name for the record?

Your full name.

A. Arnost Tauber.

Q. Your residence?

A. Prague.

Q. And nature of your employment at the present time?

A. I am a civil servant of the Czechoslovakian Foreign Office.

Q. With respect to the affidavit that is presently before this court and which was signed by you on the 3rd of March, 1947, do you have any corrections you wish to make to it?

A. Yes.

Q. Will you state those, please?

A. I want to point out that under paragraph 3 of my affidavit where, in the second to the last sentence, I speak of an extra allowance of eight grams of margarine, eight grams is a typographical error and should be corrected to read: "an extra allowance of about twenty five grams" which corresponds to about one-half tablespoon. A further correction in paragraph 5, where I speak of the fact that I myself was supposed to carry two cement bags, simultaneously at double time, which weighed 100 pounds. That is not correct. I only say how other prisoners carried two cement bags of 100 pounds each.

Q. Are there any other corrections?

A. Nothing else to be added to my statement.

Q. That is all for the prosecution. We are ready for cross examination, sir.

THE PRESIDENT: The defense may cross examine.

CROSS EXAMINATION

BY DR. SEIDL (Defense Counsel for defendant Duerrfeld):

Q. Witness, from your affidavit which has been offered by the prosecution, I see that you were a prisoner in Camp IV and apparently worked for I.G. Farben in Auschwitz. I should like to ask you, when you were arrested for the first time and what was the reason?

A. I was arrested for the first time on the 13th of May 1939 for distributing illegal leaflets.

Q. Is it true if I assume that these leaflets were apparently inciting revolt against the German occupational authorities in the Protectorate of Bohemia and Moravia or what the contents were similar?

A. The contents, of course, were directed against the National Socialist system as could not be expected any other way.

Q. Were you given a trial or were you released?

A. The Nazi system didn't put people before a trial and I didn't get one either.

Q. Witness, you did not answer my question.

A. I did. I said I didn't get one either.

Q. You were released?

A. I was arrested and I was under arrest for seventy-seven days and on the 26th of July 1939, I was released.

Q. From your affidavit I see that in September, 1939, you were arrested again and then you were sent to various concentration camps. What concentration camps were these, please?

A. Dachau, Buchenwald, Monowitz and Traibina.

Q. And when did you come to Monowitz?

A. On the 28th of October, 1942.

Q. Now this camp Monowitz, or this Camp IV as the chart behind you says - how long had it existed then?

A. We were the first inmates who moved into this camp.

Q. Do you know, witness, that this Camp IV, as it was no doubt called, was first of all intended and built as a camp for free foreign workers?

A. I don't know that.

Q. Then you were sent to Traibina on the 4th of August 1944, is that right?

A. Yes.

Q. May I conclude that it happened repeatedly that prisoners were sent from Camp IV to other camps? Can one draw the conclusion that a transfer from one camp to another was nothing unusual? Please answer the question with "yes" or "no".

THE PRESIDENT: You have asked two questions now. Wait a moment and let the witness catch up.

THE WITNESS, do you understand the questions that counsel propounded to you?

A. Yes.

THE PRESIDENT: You may answer, if you know.

THE WITNESS: Generally, there were different causes that were necessary for inmates to be transferred to another camp. Generally, one cannot speak of any transfer of inmates from Camp IV to another camp.

BY DR. SEIDL:

Q. But, witness, I must put to you that you yourself, in August 1944, were transferred from Monowitz to Treblinka.

A. I said generally. That means that it was not a normal circumstance. I should like to add, if counsel is thinking of a particular transfer of inmates, then I believe, in 1944, all Czechs were transported to Germany.

Q. Then, obviously, there were security reasons because, with the approach of the Eastern Front, perhaps the Reich Main Security Office, feared that there might be some difficulty?

A. I cannot judge that exactly. In my opinion they were economic reasons.

Q. Witness, are you aware that, at approximately this same time, the Poles in Camp IV were also removed to the Reich because of the approach of the Russian Front? Did you hear of that?

A. Yes, but I emphasize once more that I don't believe that it stood in connection with the approaching Russian Front.

Q. But you know of the fact?

A. Yes, I know of the fact.

Q. Witness, do you also know that the big Concentration Camp Auschwitz, toward the end of the war, included about forty to fifty

labor camps which were assigned to various industrial firms near this camp in Eastern Upper Silesia?

A. I cannot give you the number. I don't know whether it was forty, ten or twenty. I know that such camps existed.

Q. Do you also know that all these labor camps, or subsidiary camps as you call them, which belonged to the Concentration Camp Auschwitz, from September, 1943 on, were consolidated as an administrative district Auschwitz III? Did you hear of that?

A. I cannot remember exactly.

Q. You cannot remember?

A. No.

Q. The result of this reorganization was that the main Concentration Camp Auschwitz was called Auschwitz I. The Concentration Camp Birkenau was called Auschwitz II and all the labor camps were called Auschwitz III. You did not hear about that?

A. I know that the Monowitz camp was known as Auschwitz III.

THE PRESIDENT: Counsel for the Defense, a rapid examination of the affidavit indicates that you are going into considerable detail about matters that are merely incidental so far as the affidavit is concerned. We ask you to please exercise care to stay within the confines of the affidavit.

BY DR. SEIDL:

Q. I shall leave this subject of the organization and go on to another point.

Witness, did you yourself work in the I.G. plant and, if so, how long? I'm not thinking of Camp IV, but of your work in the plant.

A. The entire time.

Q. I see.

A. With the exception of about three or four days when I was ill.

Q. Now, may I ask you where, what construction sites or what firms you were working with and what details you belonged to, as far as you can still remember?

A. I began as a cement carrier in Hall # 820. Later, I came into the shoemaker's shop in the employee's camp. Later, I worked as a painter with the Burbank firm.

Q. What was the name of the firm?

A. Burbank. Subsequently, I worked in the paint plant of Farben. That was, I believe, Building 423, but I can't remember exactly. That terminated my activity in the Monowitz Camp.

Q. You mentioned a firm, witness, where you worked. May I conclude from that that the employer was not necessarily the I.G. in all cases, but the 150,000, or even more, firms which worked in Auschwitz in building this plant.

A. I believe it is decisive who the firm is who gives the mission, and that was Farben.

Q. But the fact is that this firm had its men and its foremen, no doubt, engineers, etc., who supervised the work?

A. Under supervision and control of Farben.

Q. Of course. But, first of all, I merely wanted to know, witness, supervision of the work on the spot was in the hands of the foreman or engineers of these various firms?

A. With the firm of Burbank that is true.

Q. Witness, you said that you carried cement and that you also worked in three other places. You were in the shoemaker's shop, you were a painter in the firm which you mentioned, and you worked for the I. G. proper. How long were the working hours in these various functions which you exercised?

A. Working hours were regulated according to the seasons of the year. May I think about it a moment in order to recall it? I believe that we began in the summer, at the place of work, excluding the way to get there, we began at 6:30 and finished at 4:30. I don't know if my statements are exactly correct. I can't remember. In the winter I believe it was from 7:30 until 3:30, but I admit that some discrepancy might exist.

Q. Since Camp IV is immediately South of the plant site, the way to work was not very far?

A. For the shoemaker's shop, it took us fifty minutes. If you look on the map, the shoemaker's shop was in Camp I. I have to find my bearings first. I believe it was over on the left hand end. The Monowitz Camp was over at the right. That means one had to traverse the whole camp.

Q. But that was the biggest distance?

A. The Hall 820.....

Q. (Interrupting) Excuse me for interrupting you but you have to speak into the microphone.

A. Excuse me, This Hall 820 was in Street A. I cannot remember exactly. That was on the Northern end of the plant, the North-western end. The way there probably took about forty minutes. The plant shop was on H Street and the way there also took forty to forty-five minutes.

THE PRESIDENT: This would be an appropriate time for our recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Would counsel for the defendant permit an interruption?

The Tribunal would like to take a moment to close the record with respect to the matter upon which we ruled this morning. I have reference to the ruling relating to the cross examination, or rather, the admissibility of documents of affiants who are deceased. We ruled on the matter and, at that time, stated that we would later read into the record a brief comment as to the basis for our ruling. In order to have this matter behind us, I should like to do that at this time if I may.

The statement of the Tribunal is as follows:

The question of the admissibility in evidence of an affidavit subscribed and sworn to by an affiant who has died since the execution of the instrument and is, therefore, not available for cross examination. Article IV of Military Government Ordinance # 7 sets forth the procedure to be followed in order to insure a fair trial for the defendants. Paragraph c of this Article states:

"A defendant shall have the right, through his counsel, to present evidence at the trial in support of his defense, and to cross examine any witness called by the Prosecution."

Article VII provides that the Tribunal shall not be bound by technical rules of evidence and may admit in evidence certain documents, including affidavits. It also provides that:

"The Tribunal shall afford the opposing party such opportunity to question the authenticity or probative value of such evidence as, in the opinion of the Tribunal, the ends of Justice requires."

The right of a defendant who is being tried in a criminal action or proceeding to interrogate witnesses who testify against him is a fundamental right and not merely a rule of evidence. The Tribunal may determine, as a matter of judicial discretion, the manner in which that right of interrogation may be exercised. That discretion does not extend to the abolition of the right, nor ³⁵⁴² may convenience or expediency dictate

its denial. To permit the introduction in evidence against a defendant and over his objection of an affidavit of a deceased witness would deny to that defendant the right to cross examine one who had testified against him, and the admission of such an affidavit may not be justified upon the ground of expediency or that it is a matter that falls within the discretion of the Tribunal.

This statement constitutes the reasons for which the objection to the introduction of the affidavit was sustained.

Thank you very much.

Counsel may continue with the cross examination.

BY DR. SKIDL:

Q. Witness, before the recess you testified about the working hours. Is it true that there was a noon recess of an average of one hour in the plant?

A. That varied. In the winter of 1942/1943 there was no lunch hour. Later, I believe it was a half hour, and in 1943/1944 there was one hour.

Q. In the course of time conditions improved considerably, is that true?

A. I can not say that.

Q. I am referring only to the working hours and the noon recess.

A. Yes.

Q. Now, witness, you also made statements in your affidavit about the number of people accommodated in the living blocks. Can you remember how many barracks were finished in Camp IV in October 1942, when you arrived as one of the first to enter the camp?

A. About three - three blocks.

Q. Do you still say that if I put to you that, according to our evidence, there were twenty-five barracks finished at that time?

A. That's not correct.

Q. How many barracks were finished in the year 1944? That is, when you left Camp IV?

A. About 58 or 52.

Q. Now, witness, how many persons on the average were there in one such barracks, under normal conditions?

A. As far as I remember, 160 or 163 beds had been provided, with the assumption that each inmate should get one bed for himself.

Q. Witness, you said that in 1944 there were 58 or 56 barracks finished. I want to tell you that, according to

our evidence, there were only 54.

A. That may be.

Q. Now you say in your affidavit that, on the average, there were 400 inmates in such a barracks. If we take this figure of 400, Witness, and multiply it by 54, which was the number of barracks, do you know what number we get? I'll tell you. 21,400. (SIC) Do you mean to say that at any time--whether it was 1943 or 1944 makes no difference--there were 21,400 inmates in Camp IV, or don't you want to correct your statement and tell us that this was a mistake?

A. Those are two questions that you are putting to me. I want to answer the second one first. As far as I remember, the maximum number was about 10,600 or 10,500 inmates in the camp. There may be a difference of a few one way or the other. The first question is only a theoretical question. One cannot divide the number of inmates by the number of barracks and then get a certain coefficient. At a time when there were only 25 barracks, there were 7,000 to 8,000 inmates in the camp. There were various blocks - the so-called living barracks were called blocks - which were occupied by various numbers of inmates. The barracks, that you have said numbered 54, contained, among others, clothing rooms, the best achievement that we had there, which was the camp brothel, and kitchen barracks. I could give you other figures which you would have to subtract from this number of 54.

Q. I don't want to interrupt you, Witness, but if you subtract, let us say, ten barracks from this 54 or 58, we still have a number left which is more than big enough to admit of the conclusion that at times there may have been some over-crowding, but that there was no question of having 400 inmates per barracks.

A. I cannot agree with you. I said that there were various numbers of people in the barracks. There were the so-called Reich German barracks, which contained 80 men per building. There were barracks of Hungarian Jews, who were transferred from the tents to barracks, where there 400 to 420 were in one such building. I should like to point out once again that you cannot calculate this mechanically. Furthermore, it is generally known that the camp fluctuated in numbers of inmates and that, at a time when there were about 25 or 35 barracks, there were 6,000 or 7,000 inmates in this camp. I have...

Q. (Interrupting): I believe, Witness, that you have already answered my question. In this connection, Witness, I should like to bring to your attention an affidavit of one of your fellow prisoners, who was in the camp at the same time as you were. I do not know whether you know the name Adolf Taub. You don't remember him?

A. No.

DR. SEIDL: Mr. President, I shall designate this affidavit of Adolf Taub of August 1947 as Exhibit Duerrfeld 1, for identification.

THE PRESIDENT: The Tribunal has no objection to your identifying the affidavit as Duerrfeld 1, but doubts very much if you may bring in an affidavit from a third party or another party and use that as a basis of cross examination. You might use some evidence that is before the Tribunal, but we would suggest that that would properly come in your defense. You're not bound by the testimony of the witness. We cannot tell, without seeing the affidavit or a question being propounded, whether or not that would be proper, but it is hardly conceivable how it could be.

DR. SEIDL: Mr. President, the contents of this affidavit refer precisely to the subject of the statements of the

witness in his affidavit: the lodging, the food, the treatment of the prisoners.

THE PRESIDENT: On counsel's statement, the Tribunal is now convinced that it is clearly not cross examination. You are cross examining him on this affidavit, and you also, in addition to that, have a right in the defense to offer witnesses who will tell what you think are the facts, but you cannot impeach the witness by handing him the affidavit of some other party or questioning him about the opinion of some other witness. That's clearly defensive matter. There is no question before the Tribunal, and we cannot forbid your asking a question, but you do have the benefit of what our ruling will be, so will you please ask your question now, and we will rule on it.

DR. GIDEL: Mr. President, may I answer what you have just said, very briefly?

THE PRESIDENT: It will not accomplish anything. The Tribunal is very firm in its opinion that this is an improper subject of cross examination. Just ask a question and, in the light of the Tribunal's observations, if you want a specific question put to the witness, state it, and then we'll rule on it.

DR. GIDEL: Mr. President, I am in a very difficult position. The defense of my client, as has been the case in all other trials and before the IMT too, is built up on affidavits, on documents, on charts, on pictures, etc., which I want to show to the Prosecution witnesses in cross examination. I did not invent this procedure. I should merely like to say that that has been the procedure of the Prosecution in other cases in which I have appeared so far.

THE PRESIDENT: The procedure suggested by counsel is so fundamentally wrong that we cannot indulge it here. You cannot do more than cross examine this witness. You say,

on your own statement, that what you propose to do is necessary for the defense of your client. We shall be glad to hear your defense and to afford you full opportunity, but we're not now in the stage of defense. You are simply undertaking to test the Prosecution's witness, and you may ask him anything that legitimately pertains to the affidavit that is before the Tribunal, but this is neither the time nor the place for your defense.

Now, counsel, it will not accomplish anything further to argue that point with the Tribunal. Will you please ask your next question?

DR. LEIDL: Then may I have a brief interruption to consult with my client and other defendants interested in this case?

THE PRESIDENT: Is there any other member of the defense counsel who desires to cross examine this witness? I was going to suggest, if so, we'll permit counsel, who apparently has been somewhat taken by surprise, to step aside and allow other counsel to continue the cross examination and then come back to him later on.

DR. HOFFMAN: Mr. President, counsel for the defendant Dr. Ambros, Dr. Drischel, asked me, during his absence, to represent the interests of his client. I intend to cross examine this witness, but I should prefer to have Dr. Gather proceed so that there will be no unnecessary delay.

THE PRESIDENT: Very well.

DR. GATHER: Dr. Gather for Dr. Ambros.

CROSS EXAMINATION

BY DR. GATHER:

Q. Witness, I should like to come back to the differences which obviously existed between the evidence of the Defense based on statistics from the period in question and your opinion -- the fact that according to the statistics in December, 1942, there were 3,000 beds available and only 1,500 men in the camp, is in your opinion, due to the fact that the number of people assigned to the individual barracks varied. Now my question is this: Witness, do you consider it possible that this internal procedure in the camp was not taken up in the statistics?

A. May I come back to what I said previously?

Q. Witness, if possible, would you please answer this question?

A. I want to clarify the question that was put to me.

Q. Very well.

A. In my statement I said that at the beginning of the foundation of Camp IV in October 1942 there were altogether three or four blocks completed. In December I think I said six blocks were ready, of which three were in use. I don't preclude the fact that this may have been so, but if the blocks were empty, then it was because they had been completed but the beds, straw sacks, and blankets were not available yet.

Q. Witness, do you consider it possible -- I mean that this information is correct -- that the statistics did not show this, according to the experience which you have had with such statistic material in big offices?

A. I believe that Farben and also the SS were very strict and exact in their statistics.

Q. In other words, you would consider the statistics correct?

A. In regard to the blocks? I didn't understand your question.

Q. You would accept the statistics of the I.G. as correct?

A. Yes, I would.

Q. Very well. According to your knowledge of the situation, do you consider it possible that in such a large organization as I.G. the statistics came up to the top?

A. One can assume that.

Q. Do you consider it possible that leading men in Farben were not informed of the details of the administration, such as the fact that certain blocks were not occupied or not quite furnished, because they relied on the statistics?

A. I believe they should have had knowledge of it for the following reason: as far as I know, Farben furnished the material to be published for the camp.

Q. Was it possible for I.G. members to be acquainted with the Monowitz camp?

A. Of course. Of course. Not for the Polish worker and not for any help in the camp.

Q. Is it not true that it was only possible to get into the camp with great difficulty, because the SS was in charge of it?

A. It was rather strict. The camp as such was not accessible.

Q. Thank you. Just a moment.

MR. MINSKOFF: May it please the Court, the Prosecution submit that it is impossible for the witness to answer whether it is impossible that the defendants here knew these things.

THE PRESIDENT: Well, that is entering into the field of speculation. The last question that was answered was more nearly competent. We will allow the record to stand. Counsel, there is no question before the Tribunal now, but you have encroached on to the borderline of competency here. Ask another question.

DR. GATHER: Very well.

BY DR. GATHER:

Q. Witness, under No. 3 you are speaking of the food supply, in the

in the Monowitz camp, which was taken over by I.G. Farben. If calculations and documents concerning the supplies sent to the camp by I.G. Farben show that the number of calories -- an invention which appeared during the war and which we have not gotten rid of yet -- was 2,500, do you consider that this number of calories was reached?

A. I wouldn't want to say anything about the number of calories or grams or kilograms or liters. I could merely state what all civilian workers or other people concerned saw. They saw that the number of calories, allegedly 2,500 in number in the camp and in the plant, resulted in these people walking around half dead. I consider it completely unimportant whether the calories were 6,000 on paper, but the persons were walking around like corpses.

Q. Witness, in delivery to a camp, large numbers -- quantities have to be delivered. Do you consider it possible, according to your experience, that if the food was inadequate, that was because the food delivered was not distributed?

A. I cannot answer that exactly; I believe it was distributed.

Q. That is your impression. For example, if you speak of 375 grams of bread in the evening, you consider that very little?

A. I would emphasize once more that it is not essential to discuss figures. The effect is important. The effect was to be noticed everywhere. Nobody, from the General Director down to the last mason, could escape noticing how these inmates looked.

Q. Witness, another question. The effect was to be observed, in your opinion, just by looking at the people? That would presume a rather thorough knowledge of conditions?

A. Of course.

Q. If I understand you correctly, Witness, you consider it not impossible, -- or, did you ever see a delivery slip on which the number of calories was calculated?

A. No.

Q. Do you consider it conceivable that such figures were drawn up?

A. It is possible.

Q. Witness, may I ask you once more to consider your correction under No. 5, Would you please repeat it? It reads:

"The heaviest work which I had to accomplish in the Buna plant was to carry cement bags weighing one hundred pounds at double time."

A. Yes. The first sentence is correct. I omitted to say that there were also cement bags of one hundred kilos -- that is two hundred pounds -- which I, however, did not carry myself but saw done.

Q. If you say that you had to do this at double time on the initiative of the foreman, what foreman are you talking about?

A. I cannot remember their names.

Q. I beg your pardon?

A. I cannot remember their names.

Q. I see. You consider it possible, assuming the case, that these were the foremen of the construction firms? It was a construction firm which had the assignment to load cement bags?

A. I regret that the defendant Faust is not here. He was an eye witness.

Q. Witness, I.G. Farben is a chemical firm, if I am correctly informed.

A. Also a chemical firm.

Q. What else is it, if I may ask?

A. It is an enterprise, as far as I know.

Q. Well, when you were there, the plant was being built, was it not?

A. Yes.

Q. Is it true that when a plant is built, it is generally built by construction firms?

A. Yes.

Q. Is it, therefore, correct if I conclude that the construction was actually carried out by construction firms, not by the I.G. Farben?

A. Partly.

Q. You say partly. That would certainly include the sector where they were working with cement?

A. No. I will explain why.

Q. Do.

A. The cement bags were unloaded from railroad cars, and the construction firm had nothing to do with that. The cement bags arrived. There were certain foremen of Farben there who supervised the loading and unloading of the cars.

Q. Witness, if I may interrupt you, you say it was a foreman of I.G. You were a prisoner, were you not?

A. Yes.

Q. How did you know whether this man was from I.G. Farben or from another firm?

A. The employers had given out certain certificates of work.

Q What firm were you talking about?

A Firms or Farben. Certificates had been given out by the chief. These certificates were signed. If the detail was working with the firm that was carrying out a construction project for Farben, then the working certificates had been signed by the construction firm in question.

Q Construction firm?

A If the detail worked directly for Farben, then the work certificates had been signed by Farben, by the construction director.

Q May I ask whether you knew who had signed your labor cards-- or whatever you call it?

A Farben had signed in Hall 520, and the firm of Burbank, and in the paint shop Farben had signed.

Q And where the cement bags were carried?

A That was in Hall 520, and Farben had signed.

DR. GATHER (Counsel for Ambros): I have no further questions.

BY DR. HOFFMANN (Counsel for Ambros):

Q Witness, first of all let me tell you that I do not intend to cross-examine you in the customary sense. I merely want some clarification on a few points in this affidavit. If you will be kind enough to follow me, under No. 3 in this affidavit, on page 131 in the German book, you said: "At the beginning of the year 1943, I.G. Farben took over the food service of the Monowitz Camp." May I ask you who was in charge of the food before that?

A As far as I know, the food came from the concentration camp Auschwitz, from the central camp.

Q And then after 1943 was the cooking done in the camp?

A Yes.

Q Who was in charge of preparing the food?

A The inmates, under the supervision of the SS. I believe the chief cook was a man from the German kitchen.

Q But the SS was in charge...?

A The distribution was determined by the civilian cook from the plant. The prisoners did the work, and there was also an SS chief cook who was in charge of the prisoners' kitchen.

Q Witness, this is merely an assumption on my part, but is it not possible that this SS kitchen chief might have put some of the food which the prisoners were supposed to get into his own pockets?

A I never worked in the kitchen; I can't answer that.

Q I would be interested in knowing whether the prisoners talked about such things. Did it get around?

A I believe—and this is my personal opinion, not based on any concrete facts—that the SS, as such, was well nourished, and that it was not necessary for them to take anything from the inmates.

Q I merely want to clarify the discrepancy between the number of calories set by the Ministry of Economics—or whoever set it—and the amount that you actually got. Something must have happened to this food, because there is no doubt a discrepancy between what was ordered and what was received.

A I never checked the calories contained in our food. It may be that on paper there were 2,500 calories, but I don't think that is important at all. It is important that the people were as thin as flies at their place of work. I cannot tell you whether the kitchen chiefs stole any food or not.

MR. MINSKOFF: May it please the Court, the witness could not be qualified to testify with respect to any discrepancy between figures which are not in evidence and testimony he has already given.

THE PRESIDENT: Well, the question has been answered. It is probably within the scope of cross-examination. We will not strike it out. You may ask another question.

BY DR. HOFFMANN:

Q Witness, can you tell me whether, after 1943, anyone in charge of distributing food or anyone of the kitchen personnel belonged to I.G. Farben?

A I believe in the distribution of bread there was a man from Farben...and in the kitchen.

Q You cannot give me the names?

A As an inmate I very rarely had occasion to find out the names of the employees of Farben. The relationship between Germans and the inmates was not such as to permit mutual formulas of politeness.

Q But how did you know that they belonged to I.G. Farben, Witness?

A Because they were civilians, and it was said that they had been sent from the plant kitchen.

Q But you know that only from hearsay?

A I saw them, but of course they didn't carry a sign "Farben" on their uniforms; I was merely told that they had been sent from the plant kitchen. I myself got the bread for the block one time, and in the place where the bread was stored I saw myself how a civilian, who was said to come from the plant kitchen, supervised the distribution of bread.

Q But the possibility that this man belonged to some other agency cannot be excluded?

A I believe it must be excluded, because private persons had no access to a concentration camp.

Q Then may I ask you—I am rather new here in this case, and I will have to ask you: Was this Camp IV a concentration camp?

A The official title was "Labor Camp."

Q Yes; but it was a concentration camp and belonged to Auschwitz?

A Yes. The name itself says "Camp IV". It was a part of the camps which Farben had erected for their labor slaves, and, as such, it belonged to the Farben camps as Camp No. 4. The inmates, by reason of an agreement between Farben and the SS, which I do not know, consisted of prisoners.

Q Witness, one thing is certain: concentration camps, in the

sense as we unfortunately know them today, were kept only by the SS. If you say Camp IV was a concentration camp, then it must have been part of Auschwitz and it must have belonged to the SS.

A I have to be a little more explicit. The National Socialist government gave me an opportunity to become acquainted with a number of concentration camps. If I compare Monowitz with Buchenwald or Dachau, then I cannot put them all in the same class; for in Monowitz constructive work was done, or was supposed to be done. The customary chicanery of the SS—I might remind you of Dachau, where we were pricked with needles; and other pleasanties—was not generally carried out in Monowitz. However, the first part of the inmates consisted of former prisoners of German concentration camps.

Q But I can tell from your words that there was a difference between an actual concentration camp and this labor camp?

A Yes, in the structure of the camp, and, partly, in the type of treatment—but not in the effect.

Q May I now ask who supervised and guarded you in Dachau—I know it was the SS. Who supervised and guarded you in Camp IV?

A Within the camp it was the SS; outside of the camp, as far as work was concerned, the civilian employees of the individual firms and of Farben.

Q Just a moment. I don't want to forget my question. Within the camp it was the SS?

A Yes.

Q Now, according to everything that I have experienced in these trials here, I believe I can say with a certain degree of justification that within the Camp Monowitz the SS did not let its rule be contested; it exercised it alone.

A I said previously that I did not know the agreement between the SS and Farben, and I cannot judge whether Farben knew when a prisoner was kicked or when he was killed; whether that was done with the approval of Farben or not. But I can assume that human beings who had eyes and,

perhaps, a heart saw what happened. I don't have to tell you here what Farben was; they certainly had enough influence—or they would have had enough influence—to influence the treatment.

Q Witness, I can tell you that this is perhaps a question of judgment. The SS was already the most powerful factor under the National Socialist regime, and whether individual members of I.G. Farben would have succeeded in combatting the SS is another question. I merely want to observe that actually the guarding within the camp was in the hands of the SS. I don't want to hurt your feelings which you have against other people, since you had to work there. I don't want to go into conditions in the camps, since that concerns the SS; but I would like to discuss with you conditions outside of the camp.

Will you please tell me when you were outside of the camp?

A During the daytime.

Q Yes, during your working time.

A Yes, working hours.

Q Or any other time?

A No, including the way to the working place and from the working place, which depended on the distance of the detail from the camp.

Q Who escorted you from the camp to the place where you worked, or did you go alone?

A From the camp gate to the entrance to the plant, I believe it was H Street, was about three hundred meters, there was a so-called file of SS people, a cordon of SS people. That means that there were SS guards at distances of about twenty meters on both sides of the road. As soon as we entered the terrain of the plant, we were without any SS guards, since the entire plant was surrounded by a chain of guards from the Garkschutz and the SS.

Q Then when you entered the plant you were no longer supervised by the SS, is that right?

A Yes.

Q I know from other trials that during work in economic concerns SS men were present in the room while the prisoners were working. Was that the case with you?

A No. I am speaking of my own working detail now. The SS checked the detail about once or twice a week. They stayed about ten or fifteen minutes. They went from one detail to another on motorcycles. There was no direct contact during the work in those details which were within the plant. There were details--they were called Aussinkommando, field details--not within the plant, where SS guards were charged with supervision, but not of the work, only guarding the prisoners.

Q Then you worked freely within the plant terrain? That is to say, not under the direct supervision of an SS man or any other policeman, but when you were at work you were actually without supervision.

A Without any uniformed guards.

Q What do you mean by that?

A Without SS supervision, but we had foreman, assistant foremen, and assistant foreman, and superior and subordinate kapos, and they all guarded each other and us.

Q Now, another question. I have been told that there were

various private firms which received prisoners from the camp—not I.G. firms, but other firms. Was that so in your case, that you belonged to another firm, or did you work directly for I.G. Farben?

A I have already mentioned previously — and I will recapitulate what I said — how I worked in Camp IV. When I carried cement, I worked directly for Farben. In the shoemaker's shop, I worked directly for Farben. As a painter, I worked for the private firm of Burbank, and as a so-called calculator, for the paint shop of I.G. Farben —

Q As a calculator, you had inside work, sedentary work?

A I had a roof over my head.

Q Was that not work which had to give you, of necessity, a certain amount of freedom? I don't want to hear anything else, but of necessity it was connected with a certain amount of freedom? I would assume that as calculator you had a certain power of decision.

A Please, might I ask you to define your question a little more? What do you mean by power of decision?

Q Tell me what you did as calculator?

A I had an adding machine and I figured out the dimensions of the various objects which had to be painted.

Q I see. And you did this from what time?

A According to the season of the year. I believe in the summer from 6:30 to 4:30 or 5:00. There may be a discrepancy of a half hour or so. And in the winter time I believe from 7:30 to 3:30. It is true, however, that in the room where I worked there was a German foreman who had me under his eye.

Q And how did this German foreman act toward you?

A He took notice of me. He never hit me, but he never did me any favor or gave me even a piece of bread, although he knew how we suffered. I can give his name.

Q May I ask what was the proportion of such positions in closed rooms? What was the proportion of inside work to outside work?

A I do not understand your question.

Q Witness, what percentage of the prisoners had to work outdoors and what percentage could work indoors?

A I have to give you that chronologically. In 1942, there was no prisoner who worked inside within the plant area. In 1944, at the time when I left the camp, that was the beginning of August 1944, I estimate about three, four, or perhaps five per cent.

Q Who did not work outdoors, you mean?

A Who did not work outdoors. There were a number of working details, maybe 200, of which perhaps 30 details worked under a roof. But those details that worked inside were only three or five or ten or fifteen men strong. But the heavy work, cable, painting, scaffold work, were details of about 150 to 300 men, who worked outdoors all the time.

Q Now, Witness, how could one get an inside job? Did the prisoners who were in special need get this easier work?

A I would have to describe to you the organization of the concentration camp.

Q Normally, one would assume that the stronger people would be given the heavy work to do and the weaker people would be given the sedentary work.

A That is quite true, normally, but a concentration camp is not normal. It would be necessary to describe the entire structure and organization of a concentration and labor camp.

Q Witness —

A I shall speak only of myself, of how I succeeded in getting work there. I was a so-called old inmate. I had been imprisoned since 1939. My comrades and I, who shared the same fate, who were imprisoned in 1939, were the first who came to Monowitz. I believe it was 405 men strong, the first transport that arrived there. Those few of those 405 who did not succumb to the harsh events of the first few weeks were given key positions in the camp, and by virtue of these key positions the old inmates in part succeeded in being given inside work.

Q May I ask you, Witness, who was responsible for this method?

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Q May I ask you, Witness, who was responsible for this method?

Did the SS determine the assignment?

A In Farben, in the SS, there was a labor commitment that was directed by an SS non-commissioned officer who had some inmates for manual labor at his disposal. The labor commitment of the prisoners was only a small segment of the entire labor commitment of Farben, and, as far as I know, labor commitment reports were submitted daily to the central office, the central office for labor commitment of Farben.

Q But, Witness, you cannot exclude the possibility that the decision as to where each prisoner was to go was decided by I.G.?

A I can't exclude it?

A Yes. You consider it possible, I mean, that the SS determined where each prisoner was to go.

A You said I.G. before.

Q That was a mistake.

A I could give you a concrete example. Let us say that a certain detail requested 20 plumbers in the camp. There was a file index in the labor commitment office of the camp, in which the professions of the inmates were entered. It was a function of the SS to find 20 plumbers in this card index and to assign them to a certain detail.

Q May I ask you, if the SS was to send 20 plumbers and had only 19, then they declared some one quite at random, a quite unqualified person, a plumber and put him in this detail?

A Partly. Plumbers perhaps are not such a special profession. Let us say that chemists were requested. If there was no chemist, then none was sent.

Q Well, now, may I assume that they wanted 20 people for heavy cable work. They were picked out by the SS, weren't they?

A They were picked out from those who did not have any special profession on record.

Q But they were picked out by the SS?

A Yes, the SS.

DR. HOFFMANN: Mr. President, I believe we could adjourn for today.

7 Nov 47-4-MB-24-5-Fox (Ints: Katz & von Schon)
Court No. VI, Case No. VI.

THE PRESIDENT: Just a moment. The Tribunal will now be in recess until nine-thirty next Wednesday morning. The Tribunal will now rise.

(The Tribunal adjourned until 12 November 1947 at 0930 hours.)

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OFFICIAL RECORD

UNITED STATES MILITARY TRIBUNALS NÜRNBERG

**CASE No. 6 TRIBUNAL VI
U.S. vs CARL KRAUCH et al
VOLUME 11**

**TRANSCRIPTS
(English)**

12-17 November 1947 pp. 3564-3927

Official Transcript of the American Military
Tribunal VI in the matter of the United States
of America against Carl Krauch et al, defendants,
sitting at Nurnberg, Germany on 12 November 1947,
0930, hours, Justice Shake, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United States
of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, you may report with respect to the
attendance of the defendants.

THE MARSHAL: May it please the Court, all of the defendants are
present in Court.

THE PRESIDENT: Has the Prosecution any preliminary observations?

MR. SPRECHER: Mr. President, we had made some mention that after
this witness we might go on with certain presentations of certain docu-
ments. I think, under the circumstances, with the considerable back-
log of available affiants who can be cross examined we should proceed
with witnesses for the time being. Is that agreeable with your Honor?

THE PRESIDENT: Very well, you can arrange that to suit your own
convenience. Has the defense any observations to make at this time?

DR. BOETTCHER: Dr. Boettchers. Mr. President, your Honors, please
permit me to come back once more to the appointment of a Commissioner in
the person of Dr. Fried, which was discussed last week. The Tribunal
stated that this Commissioner would have no judicial but merely adminis-
trative duties. Even from this viewpoint however, the Tribunal requested
the defense to submit any doubts as to the neutrality of Dr. Fried and
promised to consider these doubts. The defense learned only yesterday,
and Dr. Fried did not mention this in his letter to the Tribunal dated
4 November, that according to an announcement of the Office of Chief of
Counsel for War Crimes, Public Relations Office, Special Release No. 109,
dated 18 February 1947, Dr. Fried has published a book on the exploitation
of foreign workers by Germany. This book forms a basis for the indictment
in this case. According to the release which I have quoted, Dr. Fried is

assigned to the staff of General Taylor as an advisor. In view of this fact the defense has considerable doubts of the neutrality of Dr. Fried and we therefore request the Tribunal to consider once more whether Dr. Fried can, from this view-point, be considered a neutral official.

THE PRESIDENT: Very well. The Tribunal will give consideration to that matter and take it up at a later time. Is there anything you wish to say, Mr. Prosecutor?

MR. SPRECHER: Well, Mr. President, the Prosecution, in this matter that has just been referred to, is obviously not really a party but there is one or two possible innuendoes or inferences which might grow out of what Dr. Boettcher said and I wonder if I shouldn't make any reply to that or not?

THE PRESIDENT: Certainly. The Tribunal would be very happy to have your views on the matter.

MR. SPRECHER: The book which Dr. Fried wrote seems to us a qualification for the man and not any indication that he could not be neutral. I don't think anything he wrote in that book which was written before the IMT decision came down made any statements which would be contrary to what the IMT itself had already found about the slave labor policy of Germany. It would seem to me that a man who was so well informed and informed for so long, even during the war by various sources, as to what was going on in Germany would be in a very good position to be a very informed ministerial officer of this Court and on that ground no grounds for prejudice should be shown so far as these defendants are concerned. Now, with respect to the statement that Dr. Fried worked for the Prosecution I can only say this; that the Office of Chief of Counsel for War Crimes is the principle administrative agency which has existed in connection with the establishment of the whole Nurnberg set-up, including personnel questions, including transportation, including printing, including publication, etc., and, many of these defense counsel without the services which this office was able to put at their disposal would have been in a difficult way to accomplish their task. Dr. Fried came over here as a consultant to the

War Department initially in connection with the manpower policy of Germany. He began in an office assigned to the Office of Chief of Counsel as is anyone who first comes over here in any capacity except, I believe, the judges themselves. He was never assigned to that part of the Office of Chief of Counsel which has anything to do with the Farben Trial Team. He has never been assigned to my staff or to Mr. Dubois' staff in any way, shape or form and I don't know when, but very shortly after he arrived and this bulletin was made he was transferred to the Secretary General as an advisor there and since that time has had no relationship with the Prosecution in any way, shape or form so far as I know.

THE PRESIDENT: We shall not spend any time on this matter now. I may say as your presiding officer that the fact that Dr. Fried wrote a book is beyond my information. I knew nothing about it. I am quite sure that my associates have no information along that line, so far as his nominal or official connection with the Office of Chief of Counsel for War Crimes is concerned. I think this Tribunal, as well as counsel, understand the fact that that office has certain administrative functions that are entirely and separately apart from the judicial functions of this Tribunal. There is no embarrassment to us and there need be none to counsel about any connection or association with this Tribunal or its agencies and officer in that office. It's entirely two different matters and we shouldn't be here if the situation was such that in any way it embarrassed the free and unimpaired administration of this judicial body. As I stated before we shall discuss this matter and take it up with you at a later time. If there's nothing else to be mentioned in a preliminary way, the cross examination of the witness on the stand may proceed.

ARNOST TAUBER - Resumed

CROSS EXAMINATION - Continued

BY DR. HOFFMANN:

Q Hoffmann, counsel for the defendant Ambros. Witness, you certainly still have your affidavit in front of you. First of all I should

like to discuss paragraph 2 once more where you say in Monowitz in one block there slept 400 prisoners as a rule. May I ask you in one block equal to one hut?

A Yes.

Q Was that always the same way or are you speaking only of certain periods?

A It varied. As I said last time, there were some blocks which were so-called "Reich German Blocks" which had perhaps 60 to a 100 prisoners assigned to them and there were some blocks that accommodated 400, 420 or 380 prisoners.

Q Witness, I should like to clear up the following; the Prosecution in Book 75 on page 132, the affidavit of a certain Norbert Wollheim was introduced. Do you know Mr. Wollheim?

A Yes.

Q Herr Melheim on page 2 under number 3 of this affidavit, stated that the Concentration Camp Monowitz existed when he arrived there in March 1943 and consisted of about 20 huts which he found out later were all over-crowded, hardly one of its inmates had a bed to himself. That's what this affidavit said. Now, you, witness, said that one hut had about 160 bed-steads.

A Approximately.

Q That would mean in the case of 20 huts there would be 3200 beds and this witness further states that the entire number there were 3000 inmates. According to the statement of this witness then no barracks could have contained 400 persons.

A I don't know whether you heard what I said the last time. I said that this thing could not be handled mathematically or mechanically. If you take a pencil and divide the number of prisoners by the number of huts you will arrive at the result you have mentioned, but if you consider there were quite a number of so-called "administrative barracks", the kitchen, storehouse etc., I cannot give you the exact number—the brothel barracks and other achievements—you will achieve the result which I mentioned.

Q Well, witness, may I ask you the following; however, isn't it possible that somebody that sits at a desk and doesn't see these things in the immediate proximity as you have described them that on the basis of such a calculation such a person might assume that there was sufficient space for the prisoners since he did not know how the SS distributed the space.

A I think anyone knew that. Cooking was done in the camp, and that this wasn't done in the washroom should have been clear to anybody. I am sure that everyone knew that the prisoners were clothed even if they were clothed inadequately and that this clothing had to be stored somewhere. Since the man in charge of the food was an I. G. employee I am sure it must have been known that the food was stored somewhere, that it wasn't lying about in the open. I could go on for half an

hour perhaps to tell you how many barracks were purely of an administrative nature, as in every community such organizations have their place.

Q. Witness, I should further like to ask you in number 3 you said that in the beginning of 1943 Farben took over the food service of Camp Monowitz. Witness, you certainly know that at that time the rationing system already existed in Germany and it's quite a matter of course that just as such a rationing system was valid for all Germans, the inmates also had a certain rationing system?

A. Yes.

Q. The Prosecution submitted an affidavit also in Book 75. That's the affidavit of a certain Dr. Entress. You know him, don't you?

A. I know the name.

MR. WINSLOW: If it please the Court, that affidavit is not in evidence. It's the affidavit of an affiant who is no longer alive and is therefore excluded from evidence. It's marked for identification.

THE PRESIDENT: If that's true the affidavit would not be pertinent to any cross examination of this witness, counsel.

BY DR. MCFLANE:

Q. Witness, if I submit to you that the rations for the food of the inmates were fixed by the Reich Ministry of Economics in connection with the Reichsfuehrer SS do you believe that that's correct?

A. I cannot judge that.

Q. Thank you very much. Witness, another question; for what reason do you believe that Farben took over the food service of the inmates?

A. Up to that time — I cannot give you the exact date — I believe it was in the beginning of 1943 — up to this time we had the so-called "Kommies" it was brick shaped bread, afterwards we had the same bread as the I. G. Farben's civilian workers. Later we got the so-called "plant soup". It was cooked at first in the plant kitchen of I. G. Farben, later in the kitchen of Camp 4 and also we saw I. G. Farben trucks delivering food.

Q Very well. Perhaps you misunderstood me, witness. I asked you can you think of the reason why Farben took over this food service.

A He belonged to Farben; as such were slaves of Farben.

Q Witness, I shall come to that later. I will put a document to you that was also submitted by the Prosecution in Book 75 and that's Document 11129. That's the report of a Committee where it's stated that in order to prevent carrying on of epidemics SS is informed immediately that Farben has taken over the food service of the inmates in Camp 4 to prevent any diseases being carried on when food is delivered. This report was not made now, but it was prepared at the time when the question of the trial here in Nurnberg was not known yet.

THE PRESIDENT: Counsel has now in two or three instances in the course of the cross examination of this witness referred to other affidavits in evidence. That might be proper and permissible to a very limited degree. The only limitation, the only reason, justification that the Chair can think of that might make that proper, would be to remind the witness of the fact that something else was in evidence as testing his recollection and judgment about his own testimony. As I say, that's as far as I can possibly see that it would be proper for you to interrogate this witness about the testimony of some other witness. If you get beyond that field and get into an argumentative discussion as to the affidavit in evidence and testimony of this witness you are then invading the field of your defense and I may say that it is for the protection of the defendants primarily that the Tribunal must enforce the rule that you cannot do that. If you anticipate your defense now you are going to find the door closed against your defense when you want it most, and that is after the Prosecution has closed and the Tribunal is then ready to hear the defense. If you have invaded that territory and covered it you are going to impose restrictions on your own defense and that is going to be very embarrassing to counsel for the defense. Please bear in mind that after all the only purpose of this cross examination is to bring out details of differences

or distinctions that you think may be brought out by asking this witness about his evidence which is his affidavit. If you do that you will find it very helpful to yourself later on when you get into your defense and will avoid the prosecution saying, well, now, that's a matter you went into on cross examinations and you have had your day on that. You certainly don't want that to occur.

BY DR. FRIEDMAN:

Q Witness, furthermore, in number 3 you say about the food "it consisted of one liter of watery soup, boiled from unpeeled potatoes, etc." You say that in the morning there was only coffee; in the evening 375 grams of bread and extra of 6 grams of margarine. First of all I would like to put to you also an affidavit also submitted by the prosecution, of a certain Dr. Rudolf Vitak, Document KL-4830, and he says that in the evening there was a quarter of a loaf of bread, that's probably the 375 grams you mentioned, and then a slice of sausage, a spoon-ful of curds cheese or a teaspoon of syrup. You said you got 6 grams of margarine and perhaps more.

THE PRESIDENT: Counsel, complete the question but don't answer yet, witness, until the objection is made. Complete your question.

BY DR. FRIEDMAN:

Q Witness, I wanted to ask you how you explain the difference between your testimony when you say you only received margarine where here it's stated you also got sausage, curds, cheese or syrup?

THE PRESIDENT: That's improper and the objection will be sustained to it. That's improper and the objection must be sustained to that. This witness cannot be made the subject of a controversy with another witness. He may tell his story and you may test his story. You may, in a very limited degree, refresh his memory by the testimony of other witnesses and ask him if some witness did testify about that, whether that refreshes his recollection that that the witness said is true and what he said may be mistaken or false. But you cannot ask him how he can explain the nature of his testimony and the

testimony of some other witness. The objection is sustained.

BY MR. ROSENBERG:

Q Witness, another question: in No-4 of your affidavit you state that the I. G. Buna Camp listed 30,000 deaths during the three years of its existence. I put to you that one of the affiants of the Prosecution stated in Document 7967; a Mr. Schulhof; the leader of the Labor Commitment at Monowitz, stated that 35,000 people went through the camp and that a large number of them were returned to Auschwitz. Then, it cannot be true that there were 20,000 deaths, or do you mean to say that these people were sent away to be gassed?

THE WITNESS: The objection is sustained.

BY MR. ROSENBERG:

Q Witness, you spoke of the excavation of non-exploded bombs in Auschwitz. Do you remember and does it help your memory if I tell you that this was done on the basis of voluntary report for this work and that the giving of rewards helped in this recruitment?

A I really cannot say anything definite.

Q May I remind you that it was handled in this way, the SS promised the people that if they removed 10 or fifteen bombs they would be released? We have already heard that in other trials.

A I know that when I was in Buchenwald that was the case. I cannot remember that happening in Monowitz.

Q You don't know whether this was also the case in Auschwitz?

A I cannot remember.

Q But it might be possible?

A I cannot remember.

Q Witness, under 11 of your affidavit you say that until 1944 sickness for more than two weeks was not permitted and after 1944 up to six weeks were authorized. May I ask you that also applied to you?

A To me personally? I wasn't sick in 1942 or 1943. At the end of 1943 I was in the hospital for the first time for five weeks.

That was an exception. I mentioned the other day that the prisoners who were in custody for five or more years had reached certain key positions. It was understandable that by being in custody together for certain years a certain relationship had developed and this relationship made it possible for one prisoner to protect another.

Q. Were you then, later, also sick? You said in 1943?

A. I was in the hospital, once again later.

Q. Can you remember when you were sick?

A. In the spring of 1944.

Q. May I ask you for what period of time? I have the date here. I don't want to play hide-and-seek with you; I know it, but I would like to ask you again.

A. Seven weeks, six weeks, it might have been a little more or less.

Q. Is it possible, perhaps, that at one time you were sick sixty days and then twenty-one days?

A. That might be.

Q. Witness, in number 4 you speak of a Stefan Hymann. What kind of a man was this Hymann?

A. His function was, at first, clerk in the prisoners' hospital.

Q. Did you ever read Kogon's book, "The SS State"?

A. No.

Q. That was a German inmate from Buchenwald, who wrote a report about it. This prisoner -- and I want to refresh your memory-- also speaks of Mr. Hymann, and he mentions a certain Mr. Butschatschek. Do you know him?

A. Budiaitschek.

Q. Do you know what work Budiaitschek did?

A. He was the senior inmate of the hospital.

Q. Did he have anything to do with the transports to Auschwitz, or with the transporting of people back to Auschwitz?

A. He had the executive function, together with the SS doctors.

Q. Is it possible that this Budiaitschek was responsible for the transporting of prisoners back to Auschwitz?

A. I do not believe that a prisoner had that power. I, personally cannot judge that.

Q. I am only thinking of this because Kogon mentions it in his book, and since Budiaitschek's role is described, in my view --

MR. SPRECHER: Mr. President, it seems to me that question is laid in a way that is intended to be argumentative, and that the more direct way would be to ask the witness first if he does know, and then if he doesn't, to try to refresh his recollection, if that is the real purpose of this.

THE PRESIDENT: Well, that would be a proper way to cross-examine this witness, to ask him. If he says he doesn't know, or even denies the fact, it is proper for the counsel to refresh his memory in any way he can. The Tribunal thinks that perhaps that is the purpose of this question; it may not be directly stated. However, the objection will be overruled until we see where we are getting, at least.

You may proceed.

BY DR. HOFFMANN:

Q. Witness, may I put this last picture to you and ask you whether you remember --

THE PRESIDENT: Counsel, is that a picture in evidence, or from your files?

DR. HOFFMANN: This has not been submitted, it was merely to be put to the witness to refresh his memory, that is all. I don't want to offer it.

THE PRESIDENT: Very well.

MR. SPRECHER: Mr. President, I don't know that there is a question outstanding with respect to this picture.

THE PRESIDENT: No. The Tribunal understands he wishes to pass the picture to him and then ask him something about it. Is that right, counsel?

DR. HOFFMANN: Yes.

THE PRESIDENT: Very well.

Now, in order to keep this record straight, you had better mark

that as an exhibit for identification; otherwise we ill have no way of knowing what you did hand to the witness.

DR. HOFFMANN: May I identify this picture as document Ambros No. 87

THE PRESIDENT: Very well.

(A document was submitted to the witness)

BY DR. HOFFMANN:

Q. Are you on this picture, witness?

A. I can't find myself.

Q. Was that the equipment of your workroom?

A. I did not work in that room. That is a paintshop of I.G. Farben.

Q. May I ask you what clothing you wore when you were working there?

A. The prisoners' clothing.

Q. You said that the only person who was present in this room besides you was a foreman?

A. I had a specialized kind of work. I was a so-called calculator. There were two of us in one room.

Q. Two inmates?

A. No, the foreman and I.

Q. And what were your working hours during that time?

A. I said before that I don't remember that exactly because the hours depended upon the time of year. As far as I remember, in the summer we began at 6:30 or 7, and stopped at 5. There might be a little difference, I am not sure. In the winter we began at 8 and worked until 3:30 or 4.

Q. Was there any recess?

A. Yes.

Q. During this recess, did you get anything to eat?

A. This watery soup that I mentioned.

Q. That is the Buna soup?

A. Yes.

Q. Is this correct? I ask you whether this Buna soup was given in addition to your rations.

A. Well, what do you mean? I don't -- In my opinion it was an inadequate part of the total rations.

Q. But if you had been in the Auschwitz Camp you would not have received such a soup?

A. I know that this soup was given in Buchenwald. I was only in Auschwitz four days. In Buchenwald we had soup instead of coffee; not always, but very often.

Q. Witness, may I remind you of the following in this respect, only in order to refresh your memory? We have also had submitted by the Prosecution the statement of a certain Mr. Zlotolow. He says that those people working in the Buna factory received an extra meal at noon, a so-called Buna soup. Isn't it true that that was something extra?

A. The people who worked in the camp got the Buna soup too, not just the ones who worked in the plant.

Q. But you cannot decide to classify this Buna soup, as something outside of the normal ration and calories that you received normally?

A. No. In my opinion the calories were inadequate. I talked about that the other day. Any extra work meant only a small increase in the inadequate number of calories. However, if I were asked about the caloric contents of this Buna soup I could not say anything about it.

Q. But, witness, is it your subjective point of view --

A. You will probably have an opportunity to examine quite a number of witnesses here. I believe you will get the same answer on this question no matter whom you ask.

Q. Witness, I want to revert to one chapter touched upon by you, when you said you were a "slave of Farben". We talked about this on Friday. I should like to ask you, were you ever released from the concentration camp?

A. No.

Q. You were always an inmate?

A. Until I escaped.

Q. Very well. In Monowitz too you were always guarded by the
SS?

A. Yes.

Q. And the doctor in Monowitz was also an SS physician?

A. Yes.

Q. After you left Monowitz did you go to another camp of the
SS?

A. Yes.

Q. One might rightly conclude, then, that you always belonged
to the jurisdiction of the SS?

A. That is true in one sense and not in another. Formally
speaking, you are quite right, I was always a prisoner. I always wore
the striped uniform, that is true. However, I believe we established
this the last time — and you no doubt agreed with me — that Camp
4 was a camp that belonged to I.G. Farben. In my opinion, it makes
no difference who was in the camp, Camp 4, as such, belonged to the
I.G. and was supervised by the SS.

Q. Then I can say that you felt it in that way but that you were
not able, as a prisoner to set a clear picture about the legal
situation.

A. I could give you some proof. In my long experience as a con-
centration camp inmate I never had any opportunity, with the except-
ion of Monowitz, to see civilians walking around in the camps check-
ing the barracks, checking the prisoners, assigning the work, and so
forth.

Q. Witness, you said Friday that Farben requested the workmen
and that, in the camp of Monowitz, you had an SS office which picked
out the people and delivered them to Farben. I remember that dis-
tinctly.

A. Yes.

Q. Then it cannot be true that the choice of inmates was carried out by Farben, but that was done by the SS?

A. I could give you a concrete example from my field of work. I worked in the I.G. Farben paintshop under a man named Diemer. He needed a painter. He went to the firm of Burbank, and he saw a prisoner there who was a good painter. He asked for the man's number. He called up Camp 4 and said, "From tomorrow on, or from the day after tomorrow on, I want prisoner number such and such assigned to the I.G. Farben paintshop."

There are two sides to the question. A request might come in for so and so many plumbers, and there was no interest in the individuals, just from the professional point of view, without naming names. However, the foreman could pick out any prisoner if he was released by another foreman, and have him transferred to his work detail.

Q. But only with the permission of the SS?

A. Only formally. There is the formality and there is the actual state of affairs.

Q. Witness, do you know the name of Dr. Ambros?

A. Before the war, I believe, I knew the name.

Q. Before the war?

A. I believe so, I am not certain.

Q. But otherwise you never heard anything about him?

A. I knew that he was in the management of I.G. Farben; I never saw him myself.

DR. HOFFMANN: Thank you. I have no further questions.

BY DR. DRISCHEL:

Q. Witness, I should like to try to clarify this question: You said, "We were slaves in Farben." You emphasize the formal distinction that you were in the SS camp but that you worked for Farben. Do you know what agreements existed between the SS and Farben?

A. From direct knowledge, no. There was a great deal of talk about it.

Q. Then you cannot say, on your part, whether or what type of transfers of persons or "slaves" had been agreed to between Farben and the SS?

A. I had no access to the secret files, but I saw how things happened in practice.

Q. You knew that you were working for a Farben plant?

A. I could go deeper into that.

Q. But, as you have just confirmed, you don't know the type of agreement or that concrete negotiations existed?

A. No, I was not a member of the SS and I was not a member of the I.G.

Q. Then perhaps it is more correct if you were to say that you were a slave of the SS and not a slave of Farben?

A. I don't believe so.

Q. That is your opinion.

Another question. How do you arrive at the figure that 30,000 deaths occurred in Monowitz? In this connection you mentioned the figures of other prisoners. Where did you get this figure, and how do you arrive at this calculation?

A. That is an estimate.

Q. Oh, I see.

A. I was in Monowitz three years. I had an opportunity, in the hospital and in the office, to get an insight into the files and the lists from time to time. It may be that the "using-up" (verschleiss) of prisoners as it was called was even higher.

Q. But personally you do not know whether the fluctuations in the camp -- you know what I mean, the constant change -- resulted necessarily in the death of those people, or perhaps that they were used in another way?

A. I would like to put the question like this.

Q. No, I put the question.

Q. Who in Germany, from the Rhine to the Oder or from the North Sea to the Danube, did not know that?

THE PRESIDENT: Witness, it is necessary that you answer as best you can the questions that are propounded and not volunteer information or make statements on your own accord.

Go ahead with another question.

BY DR. DRYSDALE:

Q. Dr. Tauber, what you assume the world to have known or not to have known is not interesting to us, but the Tribunal, and I as defense counsel, are only interested in what you know and can prove concretely.

You have already stated that this figure of 30,000 is a subjective estimate on your part.

A. Yes.

Q. And you have already confirmed that you do not know concretely where the transferred people from Monowitz went, whether they went to the gas chambers or to other construction sites or places of work.

A. The prisoners were sent to Birkenau.

Q. All of them?

A. There were individual transports, which I mentioned before; there were transports of Czechs and Poles who were sent to Germany. As a rule, however, I believe I can say that they were sent to Birkenau, and it was generally known what Birkenau was.

Q. You do know also that other exchanges took place and that people were not sent to Birkenau?

A. Yes.

Q. Do you mean to say that your figure of 30,000 is to be explained exclusively from exchanges with Birkenau?

A. Yes.

Q. But you have no concrete evidence for that?

A. That is an estimate. I was an eye-witness of numerous transports to Birkenau.

Q. You mentioned Mr. Hymann--excuse me if I come back to that once more. Is that the same Mr. Hymann--Stefan Hymann--a Communist from Mannheim, a member of the Camp Information Service?

A. Camp Information?

MR. LEUSKOFF: May it please the Court, that line of questioning, concerning the personality of somebody, before this Court, can have no possible bearing upon this witness's testimony. We object to that.

THE PRESIDENT: The objection is overruled.

BY DR. DRISCHEL:

Q. Do you still have any connections with Mr. Hymann?

A. No.

Q. You don't know where he could be reached at the moment?

A. I believe that he is in the Soviet Zone in Germany.

Q. Thank you.

One more illustration of this matter from another aspect. One additional question in regard to Birkenau. Can you say that all persons who had been exchanged to the Birkenau Camp were gassed there, or didn't some of them sometimes return?

A. I cannot tell you that exactly. If I could tell you that I wouldn't be here. However, if I am to tell you, I can remember one person who was in a typhoid transport. I believe that was in 1943. That was a 12-year old boy whom they sent to Birkenau. Apparently he aroused the sympathy of an SS man, and after six months, or three months,

--I don't know exactly how long--he came back to Monowitz and he told us that the whole transport, of about a thousand or twelve hundred men, had been killed, with one sole exception, and that was himself.

Q. One moment. I could put other names to you, but that would lead us too far afield at the moment.

Can you tell us, and the Tribunal, how the selection of people who were to be sent to Birkenau was carried out?

A. Yes.

Q. Who determined that?

A. That varied. Sometimes the selection was made in the hospital directly, where the prisoners were, the SS doctor looked at all the beds, took the prisoners out of the beds, and examined their physical condition. Afterwards numbers were written down, a list was made up, and, on the same day or the next day, the transport left. That was one way.

Another way was that when the prisoners went out to work, there were some men standing at the gate who had the prisoners file past them, and individuals were taken out of the line. When they had a large enough number, they were put in a truck and sent off to Birkenau.

Q. If I understood you correctly, then, the selection of those people to be gassed was carried out by the SS physicians, be it in the hospital or at some other inspection?

A. Of the I.G. Functionaries, I knew only Mr. Duerrfeld; I myself saw Duerrfeld standing at the gate, and I saw him participate in selecting prisoners.

Q. You saw how the SS participate?

A. He participated in selecting the prisoners.

Q. For what purpose? Can you tell me for what purpose Mr. Duerrfeld selected persons, in order to send them to Birkenau?

A. I don't say that. I say that he was present.

Q. You assume that Mr. Duerrfeld was present in order to select skilled workers for his own purpose?

A. No, I could not assume that. If you see ruins of human beings who can hardly stand on their feet, everyone must realize that these are not specialized workers, that they can't do any more work.

Q. Do you seriously believe that a person of the character of Mr. Duerrfeld might waste his time as chief of the plant in order to participate in the gassing of persons?

A. Then I don't know what he was doing there.

Q. That is why I am asking you whether it is not more natural to assume, as it was also described in other affidavits, that an engineer like Mr. Duerrfeld was only concerned with picking out skilled workers, such as welders and technicians, etc., and that is why he went there. That seems to be more likely to me.

A. The motives which brought Duerrfeld to the camp are not known to me. I can only testify to what I saw.

Q. But you cannot say, of course, that Dr. Duerrfeld selected people to be gassed?

A. He did not take the people by the hand personally and pull them out, but he was standing there and he saw what was going on. I think there could have been no doubt, especially since he is a doctor and an engineer, that he was not unaware of the fate of these people.

Q. That is a personal assumption on your part.

A. I believe that anyone who had seen that would have to agree with me.

Q I should like to put another question to you, Mr. Tauber. Weren't there also days in Monowitz which were not characterized by this cruelty of which you have spoken but which might even be termed days of festivity?

A Festivity?

Q Were there any sports festivities?

A Yes, there were.

Q Were there any music performances?

A Yes.

Q And were they quite merry?

A Yes, they were made to appear very gay. There was an external appearance of merriment.

Q Didn't you, yourself, participate in such a music festival, and I believe I have a picture of you --

A I am playing the piano, but I didn't play in the orchestra and I didn't play football either.

Q But you were present at the performance?

A Yes, maybe I was.

Q Didn't you even boast of the fact that you had now made your prisoners clothing tailored to measure?

A No, I never said that.

Q But it was possible?

A Yes, it was possible.

Q Then not all persons there were destined to be killed. There were certain hours when people were getting together socially?

A Well, I did not speak of that qualitatively but quantitatively. It is understandable--I have already mentioned it--that in camp where there were so many thousand prisoners there were certain positions, administrative positions, which brought certain advantages with them and that is why, in the structure of the organization of the camp there were differences between the inmates.

Q I merely wanted to ask how it is possible that if all people

had been so miserable as you described them that those people were active in sports and that they celebrated feasts.

A Well, we are coming back to the same question—quality and quantity. In the paint shop, I was not in a bad way myself. I had a roof over my head.

Q Very well. You got out too?

A Yes, I did.

Q And possibly you know other people also got out?

A Yes. That again is a question of quality and quantity.

Q Very well. One last question, Mr. President, if you permit me. You were also in other camps or were you only in Monowitz?

A I began my career in prison, and came via Buchenwald, Dachau, to Monowitz.

Q Was there any other camp, Mr. Tauber, besides Monowitz, where these so-called cultural performances were also carried out? Wasn't this peculiar to Monowitz only?

A In Buchenwald, we had a gypsy band which played for us when we left the camp and returned to it. Later that was replaced by brass. And on Hitler's birthday and similar festivities there were concerts. Also there was a football field—I don't know whether you know Buchenwald—it was behind the last blocks. There they played football. There was no difference in that respect.

Q We have documents to prove that there was a difference. And if you say when you marched in and out from the camp Buchenwald a gypsy band was playing, this band was also in Auschwitz. That band was playing everywhere in the Third Reich when people were marching. But weren't there also performances which did not exist in Buchenwald?

A If you are talking about sports, that existed in Buchenwald too. Especially I can recall there were regular football games on Saturday and Sunday as far as the weather permitted. Again by that small number of prisoners who were better off than the majority. But I cannot remember that in Monowitz Camp, under I.G. Farben, we had any

cultural events aside from these concerts on Sunday which were given every two or three weeks, sometimes every week.

Q Were these performances partly used as a facade or camouflage to the outside world when inspections were carried out?

A I was never in the camp during working hours. I cannot judge.

DR. DRISCHER: I have no further questions, Mr. President.

DR. SEIDL: Dr. Seidl, for the defendant Dr. Duerrfeld.

BY DR. SEIDL:

Q Witness, did you have the prisoner number 68741?

A Yes.

Q Is it correct that from the sixth of December 1943 until the first of February 1944 you were in the hospital?

A That is probably right. I cannot remember the dates exactly. The time should be right.

Q That would be fifty-seven days. Is it furthermore correct that from the fourteenth of February 1943, correction 1944, until the fifteenth of April 1944 you were in the hospital?

A I am sure that must be right. I cannot remember the dates exactly, but the time is right in general.

Q That would be sixty days.

MR. SPRECHER: Mr. President, we gave the hospital book on Monowitz to Dr. Seidl, and we'll be very glad if these facts are so recorded in that hospital book to stipulate with Dr. Seidl so, without any further difficulty.

THE PRESIDENT: Counsel for the defense knows now of the willingness of the Prosecution to stipulate the fact and we hope, Gentlemen, that you will cooperate to conserve the time and not go into matters about which there are no disputes.

DR. SEIDL: Mr. President, the witness testified further that in 1943 —

THE PRESIDENT: There is nothing before the Tribunal now. Ask another question. Let's get along. We are taking a lot of time on this

cross examination.

Q Witness, do you still maintain your description of the fact that in 1943 the patients were allowed to stay in the hospital only two weeks, if I put to you that on the tenth of July alone--in order to give you an example--on the tenth of July 1943 amongst the patients delivered to the hospital there were eight who remained in the hospital considerably longer than two weeks--some of them for sixty days, some of them thirty-eight days, forty-five days, and so on?

A Yes, I still maintain my original statement. The number eight, that is an exception. I don't know. I just heard, Doctor, that you have the book in your hand, the hospital book. I am convinced that you have studied it carefully. I believe I need not answer your question even without seeing the book.

Q I merely wanted to put to you that on one single day patients were delivered to the hospital and that amongst them there were eight who remained in there between twenty and sixty days.

A I don't deny it. It was an exception.

Q You have stated further that on the average only five per cent were admitted to the hospital.

A In the beginning.

Q If I put to you now that from the seventh of July 1943 until the nineteenth of June 1944, that is less than one year, fifteen thousand seven hundred and seven (15,707) patients were admitted to the hospital, doesn't that force you to conclude that your figure of five per cent cannot possibly be correct?

A I see in that a confirmation of my number of thirty thousand, for if you had looked it up in the book, if you looked up what happened to these fifteen thousand whether they were sent to another camp, whether they were actually sent back to I.G., you would be able to find out what happened to them.

Q Witness, I did find out and I want to put it to you. From this hospital book, which covers the period of one year, it can be

seen that altogether six hundred eighty-nine patients died. It can be seen further that from these fifteen thousand seven hundred and seven patients one thousand one hundred and twenty-one were sent to Auschwitz and one thousand three hundred and ninety-six were sent to Birkenau. First of all I would like to ask you, do you know that in the Concentration Camp Auschwitz, as well as in the Concentration Camp Birkenau, large hospitals existed with hundreds of beds which had all necessary operation equipment? Do you know that?

A Yes. I would like to answer that question. You are speaking of fifteen thousand patients in one year.

Q Fifteen thousand seven hundred and seven.

A All right, fifteen thousand seven hundred. About seven hundred of them died. That leaves thirteen thousand, more or less.

Q If seven hundred died, then fifteen thousand remained, excuse my interruption.

A Fifteen thousand, yes fifteen thousand. And about two thousand were sent to Auschwitz and Birkenau. That leaves about thirteen thousand.

Q Yes, thirteen thousand.

A There were ten thousand in the camp, as you established. What happened to the three thousand? Those were only the sick people.

Q Don't you know, witness, that the remainder of those thirteen thousand were all released as healthy and fit to work back into the Farben plants? Behind, after each patient's name, the word "released" can be found, and in some cases one can find the notation "transferred to other camps or labor camps".

A That is true. You have established that the largest number in the camp was ten thousand six hundred. Thirteen thousand were released. Do you think these two thousand four hundred men all escaped? Where are these two thousand four hundred people?

Q Very well. First of all, the patients were admitted to the hospital several times and repeatedly and that speaks against your

assumption that there was any restriction in the admission to the hospital. It can be seen from the book that people were delivered two, three, even five times into the hospital. Those people were always released as healthy and apparently returned to their work again. What can you answer to that?

A That is true. Perhaps there is a misunderstanding on my part, that you considered the total number of persons who were sick fifteen thousand. I would like to say this is proof that the people probably never could be healed because they had to be released from the hospital after a certain period of time and, with the few exceptions which you mentioned to me--and I am one of them myself, I was in there forty days once and 58 days another time--it is a matter of course that these people worked for a week or two or perhaps even a few days and came back to the hospital.

Q But, at any rate --

A If that happened three times, then that was the end of it.

Q But, at any rate, it can be seen, from the contents of this book that it is not true, as you say, that from the entries of the book the fact can be seen that people were sent to Auschwitz and Birkenau.

A In part the prisoners were sent directly from the hospital to Birkenau. I mentioned that before. Of course it happened that a prisoner was released on a certain day, went into a detail for three days, and on the fourth day that commission was standing at the gate in the morning, and picked him out and he shared the fate of those who had been sent directly from the hospital to Birkenau.

Q Witness, I put to you that from our extensive material of evidence, from amongst which affidavits of inmates are also contained, it can be seen quite clearly that many of these patients who were sent to Auschwitz and Birkenau returned once more to their working place in the Farben plant because --

JUDGE MORRIS: Just a moment, Gentlemen. I'd like to make a personal observation here. I am afraid that when this transcript is read

it might be a little difficult for anyone to determine who is the witness and who is counsel. Counsel is doing almost as much testifying as the witness. Instead of cross examination, we have had a mutual discussion between the attorney and the witness, which is not pointed up to any specific question and which is consuming a lot of time. I suggest to both of you, gentlemen, that you, counsel, frame your specific and concrete questions to the witness and to you, Mr. Witness, that you would listen to the question and then answer it without attempting to go into long descriptions or voluntary discussions of what you might have in the back of your mind. I think if you two gentlemen would cooperate you would help the Tribunal to understand just what the situation is and shorten up this examination considerably.

DR. SEIDL: I shall try to comply with the suggestion of the Tribunal and to formulate my questions very briefly.

Q. Witness, do you know that some of the patients who were sent to Birkenau and Auschwitz from the hospital that numerous, a large number of them returned once more to the Farbon camp in Plant No. 4, because they were sent to Birkenau and Auschwitz for the reason of being cured in their large hospitals there?

A. As far as Birkenau is concerned, I can remember one case. I mentioned it before. I cannot remember any such case from Auschwitz.

Q. Witness, you mentioned previously that Dr. Duerrfeld too was once present at the inspection of the prisoners. I notice in your statement that on the one hand you say the inmates were badly fed and not able to work and on the other hand you say they had to do heavy work. Isn't it likely to assume that because of this fact in some cases the plant management said these inmates really have to be used for other work, for instance in an office or in some other camp belonging to Auschwitz? That is possible, or do you want to preclude that?

A. From what I know from my own experience, I cannot remember that anyone because he was undernourished or incapable of doing hard physical work, was given a better post or was transferred to another camp in order to improve his lot.

Q. I have another question, Mr. Witness. You say that in the case of excavation of unexploded bombs prisoners were killed. Can you tell me how many inmates altogether were killed in this way?

A. I don't know.

Q. Were there only a few or were there many?

A. In 1944, as you can see from my affidavit, I left Monowitz for Tribunia. I can only judge as long as I was in Monowitz. What happened afterwards I don't know.

Q. May I say, Witness, that you know this from hearsay and did not see it yourself?

A. I did not see it myself.

Q. In your affidavit, you also make statements about the labor correction camp, and you say that this camp comprised about twelve to fourteen barracks. I have to submit to you that another affidavit mentions first of all two, and later on four barracks, does that induce you to correct your statement?

A. It is true that in the beginning there were only two. I know that.

Q. And how many at the end?

A. Just let me think a moment. I cannot remember exactly. Less than twelve. Less than twelve, that is true, yes.

Q. Then you made an error in your affidavit?

A. Yes, that is right. I don't know whether there were four, but because the barracks were in rows of two, I know there weren't six rows. There might have been six or eight huts altogether.

Q. Witness, we have evidence, hundreds of affidavits I should say, from inmates—

THE PRESIDENT: That is enough. You have already indicated the impropriety of the question. Ask another. We sustain an objection, that hasn't been registered, to that question.

Q. Is it true, Mr. Witness, that Camp 4 in many points was much better and differed in a favorable way from other camps that you saw yourself, such as Buchenwald, Dachau, and Auschwitz?

A. In part yes, in part no. For example, in Buchenwald and Dachau there was a room for the prisoners where they could sit down, where they could eat their soup. That did not exist in Monowitz, with the exception of the so-called permanent people. In Buchenwald, there was a library, really quite a good library with foreign language books. I never saw a book in Monowitz aside from some trash that were smuggled in.

Q. Excuse me if I interrupt you, Mr. Witness. What you have stated just now, isn't that to be explained by the fact that Buchen-

wald was already constructed in 1937, that is before the war and was an old camp, but that Camp 4 was constructed only in 1942, when the war was in its climax?

A. That is partly true. Buchenwald was a much bigger camp than Monowitz. I was not in Germany in 1937. I came to Dachau in 1939; and after 1939 I came to Buchenwald. The camp was not finished. I helped to build the camp. We built barracks.

Q. Witness, I don't think you have to deal with that in detail, but please describe the positive points that you don't want to contest.

A. Positively, for example, in the last months we had every second Sunday off. That had not been the case before, in the beginning. It was on the plus side for us that we had the opportunity, after six or ten years of isolation, to see civilians and talk to civilians again. It was on the plus side that we had a better chance to escape.

Q. Witness, you mentioned the prominent persons of the camp previously. Do you understand by that those of the illegal camp management or what do you mean by that?

A. The people who had positions, who because of their long time they had been in custody -- I have already talked about this twice now -- and by mutual support, had taken up key positions in the camp, like the cook and the SS orderlies and all the others.

Q. In Monowitz there was also such an illegal camp leadership? Do you know that?

A. I don't know it by that name.

Q. Were you yourself at any time as a prisoner, were you a kapo or were you something like that?

A. I was a foreman.

Q. Oh, you were a foreman. What was the reason that in September 1939, as you state in your affidavit, you were arrested as a hostage?

MR. STRECHER: Mr. President, I think that has been asked and

answered previously.

DR. SEIDL: May I answer this, Mr. President?

THE PRESIDENT: Yes.

DR. SEIDL: During the past week I asked the witness when he was arrested for the first time, but he was arrested twice and I did not yet ask him what the reason of the second arrest was.

THE PRESIDENT: Very well. You may ask the question.

Q. Please answer the question, Mr. Witness.

A. Until today I actually have not succeeded in finding out the actual reason for my arrest. I don't know whether you are aware of it--

THE PRESIDENT: Witness, please, if you mean that you don't know why you were arrested, just say so and let the matter pass.

Q. Was the reason perhaps the fact that you belonged to a certain party?

A. I do not think so.

Q. Did you belong to a certain party?

A. Yes.

Q. Which party? Which party did you belong to, Mr. Witness?

MR. MINSKOFF: May it please the court, the question is completely out of hand. He mentioned he didn't know why he was arrested the second time. He wasn't told why. As to his political affiliations, if any, they are completely irrelevant to the questions before the court.

DR. SEIDL: Mr. President, may I give the reason for this question? I put the question for two reasons: first, to refresh his memory, and secondly also to test his credibility. And since he himself says in his affidavit that in September 1939 he was arrested and that he cannot state the reason for his arrest, it seems proper to me to put this question to him.

THE PRESIDENT: The question is proper, the Tribunal thinks. The witness may answer.

A. I belonged to the Communist Party.

Q. And you still belong to the Communist Party now?

A. Yes.

DR. SEIDL: I have no further questions.

THE PRESIDENT: It is now eleven and time for our morning recess. I think I may say on behalf of the members of the Tribunal what has been observed before, that sooner or later in the course of every cross examination the time is reached when the Tribunal feels that the amount of time consumed does not justify the good that we are getting out of any further inquiry. I have no hesitancy in telling you that we feel that way as far as this cross examination is concerned. The cross examination is in the hands of counsel for the defense and I pass along to you how the Tribunal feels about it for whatever it may be worth to you in continuing your inquiry.

May we ask the prosecution at this time if you can indicate to us who your next witness will be and in what book the affidavits will be found, before we recess. It will give us an opportunity

MR. MINSKOFF: The next witness will be Gustav Herzog. That is in Book 79. The affidavit had not been introduced in evidence as yet. It will be introduced immediately before he testifies.

THE PRESIDENT: Book 79?

MR. MINSKOFF: Book 79. It is MI-12069 and will be offered as Prosecution Exhibit 1468.

THE PRESIDENT: Do you know what page it is on in our books?

MR. MINSKOFF: That is in 42 of the English.

THE PRESIDENT: Thank you.

DR. SEIDL: Mr. President, may I say something in this connection?

I object to the examination of that witness at the present time. The prosecution has not so far submitted this affidavit in evidence. Furthermore, last week Prosecution has given us a list of witnesses whom they would bring here as witnesses. The name Herzog was not mentioned amongst those four names and I am not able to carry out cross examination

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of this witness since it is completely impossible for me to know three hundred or four hundred affidavits by heart. The prosecution told us last Friday that they would call the witness Hess, the witness Treister, and the witness Schulof. We prepared for the examination of those witnesses, but I am not able now to carry on cross examination of a witness whose name I just hear now and whose affidavit has not yet been submitted into evidence.

THE PRESIDENT: Has the prosecution another witness you could use instead?

MR. STRECHER: Mr. Minskoff will offer to bring another witness. The only thing is, Your Honor, we have given the required notice. The affidavits have been in the hands of defense counsel for sometime which is much more than in the normal case where they are required to cross examine immediately after direct. There is a limit as to how far we can bend the normal schedule of the prosecution's case to suit the Defense.

THE PRESIDENT: Let's not have a colloquy here between counsel now. It is not necessary. Just address your observations to the Tribunal and we will settle the controversy. Was this witness Herzog one whose name was given to counsel for the defense last week, who would be produced for cross-examination this week?

MR. SPRECHER: It was given by form of the usual written notice. It was not announced orally in court. Because the oral announcements are subject to change, according to the vicissitudes under which we work.

THE PRESIDENT: Those changes usually come about by the fact that prosecution is not able to produce witnesses who have been announced. This is rather a reverse of it. Now you are bringing in a witness whose name you have not given to the Tribunal or to the defense and whose affidavit is not yet available to us except by anticipation. Is that true?

MR. MINSKOFF: That is true, Your Honor, We are perfectly willing to call the witness whose name we had formerly announced. The only reason we switched was that one witness was not able to stay in Nurnberg. We would like to offer this witness Herzog after our witness we offer now. We now offer Schulhof but we—

THE PRESIDENT: Schulhof's affidavit is found where?

MR. MINSKOFF: In Book 74. It is Prosecution Exhibit 1452.

THE PRESIDENT: What is the page of it?

MR. MINSKOFF: 672 of the English, 128 of the German.

THE PRESIDENT: The Tribunal will now rise for the morning recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Do Counsel for the Defense consider that it is necessary to cross examine this witness any further?

Any redirect examination?

MR. HINSKOFF: No, Your Honor.

THE PRESIDENT: Mr. Witness, you are excused and the Marshal will escort you out.

Call your next witness.

MR. HINSKOFF: Ervin Schulhof.

THE PRESIDENT: Bring in the next witness when you come back, Mr. Marshal.

What is the nationality of this witness?

MR. HINSKOFF: Czechoslovakian.

THE PRESIDENT: Thank you.

ERVIN SCHULHOF, a witness, was examined and testified as follows:

THE PRESIDENT: Mr. Witness, you will remain standing for the purpose of being sworn, and I shall administer to you the oath that prevails in your country.

Will you please raise your right hand, say "I", and state your name?

THE WITNESS: I, Ervin Schulhof --

THE PRESIDENT: And now repeat after me -- swear a pure oath that to all questions asked here before the Tribunal I shall answer only the truth, nothing but the truth, and that knowingly I shall withhold nothing.

(The witness repeated the oath.)

THE PRESIDENT: The witness may be seated. Mr. Witness, may the Tribunal inquire if the use of the signal lights on the witness stand have been explained to you before you came in?

THE WITNESS: Yes, it was explained to me.

THE PRESIDENT: Now, just one thing further, please. When questions are asked you, answer as simply, as directly and as briefly as possible. Do not fall into the error of trying to anticipate what Counsel wants you to tell by volunteering information. You can be assured that if your answer is not as complete as Counsel wishes that another question will be asked. Speak slowly so that the translators have an opportunity to communicate your evidence to the Tribunal and to Counsel.

The witness is with the Prosecution.

DIRECT EXAMINATION

BY MR. LINSKOFF:

Q What is your full name, Mr. Schulhof?

A Ervin Schulhof.

Q Where do you reside?

A In Pilsen, Czechoslovakia.

Q With respect to your affidavit of the 21st of June, 1947, are there any corrections or additions you wish to make?

A I have nothing to add.

MR. LINSKOFF: The witness is at the disposal of the Defense, Your Honor.

THE PRESIDENT: The Defense may cross examine the witness.

DR. SEIDL: Dr. Seidl for the defendant Dr. Duerrfeld.

CROSS EXAMINATION

BY DR. SEIDL:

Q Witness, on what date did you come to Auschwitz?

A At the end of October 1942.

Q And when did you come to camp 4, Monowitz?

A About six days later.

Q Were you one of the first prisoners to be assigned to

camp 4, Monovitz?

A Yes.

Q Under paragraph 2 of your affidavit you say that camp 4 existed already in 1941.

A That was told to me by the old inmates.

Q You know that only from hearsay?

A Yes, from hearsay.

Q Then apparently you know only from hearsay that there was a typhoid epidemic?

A Yes, also that is only hearsay.

Q On what construction sites in the I.G. plants did you work, witness?

A The first construction site was the cement hall, 820 on Street A. That was the only construction site in which I worked myself in the camp.

Q And how long did you work there?

A I was in this work detail until the beginning of December, 1942.

Q Only a few weeks then?

A About five to six weeks.

Q What kind of work did you do there?

A The main work was the unloading of cement.

Q And then where were you sent, witness, in December 1942?

A In December, 1942, I was employed as a clerk at the labor commitment office in the camp.

Q The office was in camp 4 proper?

A Yes.

Q Under whose supervision was this labor commitment office?

A This labor office existed under the direct supervision of the SS.

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Q The office was in camp 4 proper?

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Q Under whose supervision was this labor commitment office?

A This labor office existed under the direct supervision of the SS.

Q Aside from you, where there other prisoners employed in this labor commitment office?

A Yes. A Pole was there at that time.

Q In your affidavit you say that in the course of your work in this labor commitment office you made reports. Will you please tell the Tribunal at what intervals these reports were made and what the contents of the reports were?

A They were not reports. They were merely compilations of those prisoners used for work that we had to make available to Farben and to the SS so that they should know how many inmates were sent to work on a certain day. These compilations were made daily.

Q These lists or compilations which you call them -- it makes no difference what you call them -- were they divided into details?

A Yes, from 1 consecutively, etc.

Q And the total showed the number of inmates present in the plant or in the camp?

A No. The sum total was only the daily number of workers of a certain day. When I went to the place of work, I had to add those who were in the hospital, those who were ordered to appear before the doctor or for any other reason incapable of working, and that final compilation gave the total strength of the camp.

Q Witness, is it true that these daily reports merely gave the actual number of inmates present every day but did not indicate the new arrivals and the departures?

A The arrivals and departures were listed under "Camp Strength". That means, my last figure, the total, was "Camp Strength", underneath there were listed "arrivals" and then "departures".

Q. In October 1942, when you came to the camp, there were about three or four hundred prisoners in camp IV, is that right?

A. When we arrived, we were the first; there was nobody before us. When we arrived, we marched out the first day to work -- about five hundred of us --and about the second day another five hundred arrived.

Q. And subsequently the number of prisoners increased constantly, is that right?

A. Yes, it increased through new arrivals, but it also diminished through departures.

Q. But at the end there were more than 900 prisoners in the camp. It is therefore quite clear that the departures were more than compensated by new arrivals. Is that correct?

THE PRESIDENT: Now, Counsel, that is not a question but a statement of your own. You have told the witness that at a certain time there were a certain number of prisoners in the camp. That is not permissible. Please ask questions; do not volunteer information, and we shall not have to take so much time on the cross-examination.

Q. Witness, I shall put my question differently. Is it true that the number of prisoners increased constantly?

A. Yes.

Q. In your affidavit you say that because of the number of prisoners assigned to work there were inaccuracies every month. Can you tell me how these disagreements with the plant management of Farben were brought about? Don't answer the question yet. Is it true --could it have been in connection with the fact that every month the prisoners were paid --or, rather, the prisoners' pay was sent from the plant to the Reich?

A. I had nothing to do with the pay. That was an affair between the management of Farben and the SS. The disputes arose from the fact that when we went to work in a labor detail we had fifty inmates, for instance. It happened in the morning, for instance, that one or the

other was killed and he collapsed, or that he died, and that the foreman who had to confirm the number of prisoners that were working could only confirm 48 instead of 50, since two of them were eliminated already in the morning.

We of course had already compiled the report to the labor commitment and had listed the detail, consisting of 50 men ...

THE PRESIDENT: Now, Mr. Witness, pardon me. You are forgetting what the Tribunal told you about answering briefly. It is not necessary for you to go into all these explanations. You answer the question directly and simply and in a few words, and if the answer is not sufficient, counsel will ask you another question. This is timeconsuming when you volunteer information like that.

Ask another question, Counsel.

Q. In your affidavit you draw the conclusion that the I.G. plant management was informed about the loss of people in Monowitz.

I ask you: Is it not true that there was constant fluctuation between Camp IV and Auschwitz and other labor camps, and that the plant management could not realize that?

A. No constant fluctuation occurred. Without the knowledge of the construction management we were not allowed to transfer any inmates from Monowitz to another camp.

Q. But it is not a fact that the SS was constantly transferring inmates. Is that true?

A. That is correct.

Q. And, therefore, from your statement one cannot conclude that the I.G. management must have known because of the fact the prisoners fluctuated --that these prisoners had lost their lives in an unnatural way?

A. The management had to know this since the foremen complained to the management that they received always new prisoners for work, and when they were asked where were the old inmates they received

the reply that they died or became sick.

Q. Is it not true, witness, that there was an exchange between the details in the plant itself, and that for this reason it was quite possible that the prisoner would be lost for one foreman and be sent to another detail?

A. That happened, and in the case the Kapo had to report to the foreman that the construction foreman had ordered that a certain number of prisoners were allocated to another working detail.

Q. That such reports were made you do not know?

A. Yes, they were made.

Q. I mean whether they were always regularly made?

A. They were regularly made; the Kapo had to report this to the foreman.

Q. In your affidavit you go on to say that in two and a quarter years 35,000 people went through Monowitz --or Camp IV, as it is also called.

Now, I put to you that within one ^{year} ~~only~~ 689 people died in the camp. This figure could not have appeared especially high to the plant management if considered in connection with the reports that you, yourself, made.

A. The number of deceased was difficult to determine for the plant management since the camp management could not determine that either.

Q. That is sufficient, witness. Now, you also said that in 1943 two thousand prisoners were sent away. Do you know that these prisoners were not sent to Birkenau or Auschwitz, but to another camp in the Reich?

A. For these transfers we had to compile certain transfer lists, and the first sentence read: "The concentration camp Monowitz transfers to the concentration camp Auschwitz II, the following prisoners."

From this we could see where the transport went.

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From this we could see where the transport went.

Q. And you, yourself, know that these 2,000 prisoners went to Auschwitz, from your definite recollection?

A. These 2,000 inmates went to Birkenau -- that is Auschwitz Number II.

Q. And you still insist on this if I put to you that, according to the testimony of other witnesses, these prisoners did not go to Birkenau?

A. These prisoners went to Birkenau. That was the first large transport from Auschwitz III, that is, Monowitz, to Auschwitz II. I can remember the list of transfer and I know that they went there.

Q. Which month was that?

A. That was at the end of February 1943.

Q. Then you say that the change or the reduction could be clearly seen, because the people were taken off the food lists? Is it not true that these reductions were more than compensated for by the new arrivals? and that the food lists did not show any reduction in the number?

A. In the case of large transports, such as the transport to Birkenau, such a large diminution of the inmates had to be apparent since no new ones had arrived.

Q. But normally the arrivals more than compensated for the departures?

A. No. If large transports went away, one could always see whether there was a large departure or a large arrival since simultaneously no arrivals or departures occurred.

Q. I am not talking about these big transfers; but there must have been smaller ones too, and it was not necessarily obvious what transfers there were within the camp. Am I right?

A. The shifts inside the camp were apparent.

Q. Then, in your affidavit you speak of the labor correction camp. How many barracks were there actually in this camp?

A. Originally, two; at the end, four.

Q. Then it cannot be right if another witness says between twelve and fourteen?

A. Not the labor correction camp, no.

Q. No further questions.

THE PRESIDENT: Thank you, Counsel. That is a very direct cross-examination.

BY DR. DRISCHEL (Counsel for Ambros:)

Q. To clarify a few questions, Mr. Schulhof; you just said "We were the first ones to come to Monowitz." That agrees with the other testimony.

Q. Then you say that the change or the reduction could be clearly seen, because the people were taken off the food lists? Is it not true that these reductions were more than compensated for by the new arrivals? and that the food lists did not show any reduction in the number?

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BY DR. DRISCHEL (Counsel for Ambros:)

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Now, how does it happen that in your affidavit you say the camp Monowitz existed already in 1941 and it was closed down because of a typhoid epidemic, and that the inmates were gassed in order to prevent the spreading of the epidemic?

If you were the first ones, nobody could have been gassed before that?

A. I mean that among the first when the camp was reopened. What happened before I only heard from hearsay.

Q. Was there a camp earlier or not, a Camp Monowitz?

THE PRESIDENT: Now, Counsel, the witness says that what he knows about what happened before he came, was hearsay. It would do no good to cross-examine him with reference to that because whatever parts of his affidavit appear to have been based upon hearsay will have no weight or consideration from the Tribunal. We can assure you of that. We shall ignore it. So that it will not be necessary for you to pursue that inquiry.

DR. DRISCHEL: Thank you; then that is clarified.

BY DR. DRISCHEL:

Q. Then a second question. You were working in the labor commitment office? You said this office was under the supervision of the SS?

A. Yes.

Q. Who gave you orders and instructions to what details were to be set up and for what purposes were they set up?

A. Generally the labor leader, and later Engineer Faust directly.

Q. This labor leader was an SS-man?

A. Yes.

Q. When did Mr. Faust give you orders directly?

A. After the first air raid occurred.

Q. The Tribunal and I do not know when that was.

A. The first air raid happened on the 20th of August 1944.

Q. Was that an exception or was that constant practice?

A. That was a standing institution.

Q. And how long did that last?

A. Until the camp was dissolved.

Q. According to our evidence, that can not be true-- but we will check that.

Another question. In general, how many sick people were there according to your lists? Were there very many or not? Can you state any figures?

A. I cannot give you exact figures since I only listed those people who were reported in the hospital, but I know that the construction management of Farben constantly complained that the number of sick people was too large....

THE PRESIDENT: Now, wait a moment, witness. You have answered the question. You have said you could give no exact figures; it would not be proper to go into what Farben knew or did because that was not the question that was asked. If counsel wants to know about that, they will ask you another question.

DR. DRISCHEL: That is sufficient, Mr. President.

THE PRESIDENT: Thank you very much, Counsel. Any further cross-examination of this witness?

BY DR. HOFFMANN (Counsel for defendant Ambros;)

Q. Witness, you were speaking of Monowitz as Camp Auschwitz III. Was that the official name?

A. At the beginning that was the official designation, as long as it was a subsidiary camp of the permanent camp Auschwitz. Later it was made independent. Then it was called concentration camp Monowitz.

Q. With its own SS guards..?

A. Yes.

Q. Witness, in your affidavit--

THE PRESIDENT: Go ahead, Counsel.

Q. In your affidavit you were speaking of food. Can you tell me what food you got daily? You, personally?

A. I received just as much as every other inmate.

Q. And what was that?

A. That was a bread ration, in the morning a very black and bitter coffee; and at noon we received a so-called "Buna soup"; and in the evening another soup. Two to three times a week there was a teaspoonful of margarine, and once a week perhaps a larger spoonful of marmalade.

Q. Can you remember sausage? Some other witnesses have testified that--

A. Yes; there was also some sausage. Especially at the beginning, there was the special allocation for "heavy workers." That was sausage; but that was later discontinued.

Q. When?

A. I believe around the turn of the year 1943-44, but I cannot remember exactly.

Q. Do you know why it was stopped?

A. I don't know why this heavy workers' allocation was stopped.

Q. Could it have been that it was distributed to all the inmates so that everyone got some?

A. No further ration was distributed.

Q. Did the food in general become better?

A. No; it deteriorated.

Q. Witness, you say it happened that people were killed when they left the camp in the morning. Was that done by the SS?

A. Contrary to other camps in the Reich, the SS did not hit anybody--almost not at all.

Q. Were you in any other camps?

A. In Buchenwald.

Q. Was there a difference between Buchenwald and Auschwitz III?

A. I could illustrate this difference with a small example. In Buchenwald, when an inmate bent down and an SS-man was passing by he would certainly kick him. I have never seen that in the two and a quarter years that I was at Monowitz.

Q. Thank you. No further questions.

THE PRESIDENT: Any further cross-examination of this witness? None is indicated to the Tribunal. Any re-direct examination?

MR. MINSKOFF: No re-direct, Your Honor.

THE PRESIDENT: The witness is excused and the Marshal will escort him from the box.

Call your next witness.

MR. MINSKOFF: If Your Honors please, I take it the same objection may be raised to Mr. Herzog at this point; they haven't had a chance to read it yet.

THE PRESIDENT: It would be well, if you could, to let the noon hour go by so counsel would have a chance to scan the affidavit before the witness is called. Do you have anyone else you could use in the next twenty minutes?

MR. MINSKOFF: If the Court will bear with us a few minutes---

THE PRESIDENT: Surely; confer among yourselves, and if you could call another witness it would give the Defense a few moments to look over the affidavit of the witness Herzog.

DR. BOETTCHER (Counsel for defendant Krauch): Mr. President, may I take advantage of this pause in order to hand in the copy of the statement which I quoted this morning, referring to Dr. Fried?

THE PRESIDENT: Yes.

DR. BOETTCHER: One copy for the Court and one for the Prosecution.

THE PRESIDENT: Mr. Secretary, you had better keep that in the files and see that we get copies of it at the proper time so that we will have it in the record.

MR. SPRECHER: May I also use the short pause for one brief statement? Dr. Nelte asked me if an affidavit by Moyeux (M-o-y-e-u-x) which was not offered was out of the case-in-chief. I may say that with respect to all affidavits that are in the document books but which were not offered, it is our position that they are out, so far as the case-in-chief is concerned--except that there are always the possible exigencies of trial which might make it necessary to recall the witness. All I can say is that if the document is not offered--and, Dr. Nelte, this is certainly true with respect to the Moyeux affidavit--we have no present intention of offering it or of calling that witness during the case-in-chief.

THE PRESIDENT: Very well. The Tribunal would understand, of course, that something might arise that would prompt the Prosecution to offer an affidavit that it had otherwise expected to pass up. We assume that if that is done counsel for the Prosecution can and will advise the Defense of the change of attitude.

MR. MINSKOFF: May it please the Court, while we are waiting, I have two corrections that I might offer for the record. On page 4 of the English and 9 of the German, the question was raised in Court as to the translation "camp care and supervision..." The Prosecution is willing to have "...and supervision..." stricken from the document, and have it read "...camp care..."

THE PRESIDENT: The Defense will take notice of the change in the English book. Is there any further controversy

about the translation? The Defense may point it out subsequently.

MR. LINCKOFF: Also, in Document Book 73, on page 11 of the English and 24 of the German, it states: "On the occasion of a dinner which the administrative authorities of the concentration camp gave in our honor..." strike the "gave in our honor" and have it read: "On the occasion of a dinner by the administrative authorities given for us..."

THE PRESIDENT: Very well. The record will be considered to have been accordingly corrected.

MR. SPRECHER: The prosecution is taken a little by surprise, and therefore we have no other witness at the moment.

THE PRESIDENT: Could we receive a few documents out of one of these books?

MR. SPRECHER: Yes, Mr. Linschaff and Mr. Von Halle have ordered some of the documents to be brought down. Could I then take up an entirely different topic while we are waiting for the documents, which I wanted to bring before Your Honors at one time or another in the presence of defense counsel?

THE PRESIDENT: Very well.

MR. SPRECHER: Mr. President, I have here in my hand Pages 4885 to Pages 5513, nearly 700 pages of the transcript of the IIT case. That entire period, with some few exceptions, was given over to discussions of competency, with respect to whether or not interrogatories were adequate in connection with many of the things which the defense was seeking to bring out, and with respect to such questions as to whether or not, for instance, the book which Dr. Achenbach brought up here, for example, in one of the cross examinations, was admissible.

Now, the reason I bring this to your attention at this time during this little pause is because it seems to me that it was because of the handling of this matter in a very calculated way with a great deal of discussion between defense counsel and prosecution and finally discussions before the Tribunal, that the defense case in the first case went in, I think, rather well directed to issues which were really before the court, and where we were able to avoid many arguments in court which otherwise we should have had to make there concerning matters which were really not of great substance or matters which could have been pointed up by virtue of a lot of work outside of court, which was principally handled, I may say, by the British and the defense counsel. I only suggest that to begin with, if Your Honors could read over the pages beginning with 4885 and continuing where the general problem was discussed, it might be helpful, and if defense counsel would do the same, we might then have a discussion, say a week hence, concerning some similar matters.

Now, it seems to me that what precedent we do have concerning the arrangement of such a matter exists in these pages and in the practice before the IMT, because you will find, I believe, that the greater number of issues with respect to competency came in connection with the aggressive war charge and the conspiracy charge in Case No. I.

THE PRESIDENT: Pardon me, counsel. Do we understand that the part of the IMT record that you are concerned with begins with Page 4885 and concludes with Page 5513, is that correct?

MR. SPEECHER: Yes, Mr. President.

THE PRESIDENT: Is that available in the officially published English edition, or is it in the manuscript yet?

MR. SPEECHER: It is in the official mimeographed copy, but not in the official printed copy.

THE PRESIDENT: I may say that the Tribunal has been under some handicap, as I know counsel must be, because of the rather awkward situation that exists regarding the availability of the IMT record. I have been informed unofficially that a series in the English edition will probably run to 30 or 35 volumes. I think we have available now only about five. Of course, we understand that the mimeographed record is to be found in the archives, but it will help us if we may have our attention directed to the specific part that is involved. Personally, I doubt whether we would conserve time by anticipating problems and having any general discussion of the force and effect of IMT precedents. It is a great deal of matter of trying to meet something before it arises, and when it does arise, it may be something different. But it will be helpful, I think, that if within the confines of these pages you have cited to us, are to be found some of the things upon which the prosecution will reply, and the Tribunal may have an opportunity in the meantime to go over it and counsel for the defense do likewise. If there is any similar presentation of something that might be helpful that the defense wishes to call our attention to, we shall be glad to have that also.

MR. SPEECHER: Mr. President, I did throw it out rather generally,

but I am afraid I have been apparently misunderstood, because I didn't want to be too specific in my remarks at this time until both Your Honors and the defense counsel had read the matter over. I can make it a bit more specific; for example, so far the prosecution has objected to all requests for the subpoena of witnesses for the defense, solely on the ground that they were premature. I think almost each of these requests — may I go back to another point? We have in every case made no objection to the defense having access to these persons either for interrogatories or for getting proper affidavits, but I can say that almost without exception, on the basis of the grounds stated on those applications, comparing the grounds stated to the grounds stated in the IMF case, the prosecution will have the simple way out merely by saying that the grounds stated are insufficiently clear and specific, for the prosecution to be in any position to make a reply to this application. In other words, I think that the applications for witnesses, the applications in connection with documents, will have to state something of their intended purpose so that —

THE PRESIDENT: Let's just understand ourselves here. The Tribunal has favored the view of the prosecution that the actual bringing in of the witnesses or the issuing of a summons might well be postponed until near the time when the witness would be needed. That, certainly, is not subject to debate and certainly does not interfere with any substantive right of the defendants. In the routine orders that the Tribunal has made, we have in effect ordered the issuing of the subpoena or summons postponed but allowing counsel for the defense the privilege of interrogating the witness or making such other inquiry as to facts that they may wish to develop. Beyond that fact, the Tribunal does not see where it has any interest in the matter, certainly not in the absence of some abuse. It is of no concern to us whether the showing for the right to interrogate the witness is full and complete, and frankly, on the surface, I don't see how that is a matter of much concern to the prosecution. I don't know that there is any precedent for the fact that you have notified the defense when you have gone out to get affidavits as to what the purpose of your inquiry was or anything of that sort.

it seems to me that that is only a matter of simply preventing abuses and preventing the burdening of the Tribunal with too much detail. Do you take the view, Mr. Prosecutor, that before the defense can go out and interrogate a prospective witness they should file some petition and make known to you the purpose of the inquiry? Is that your view?

MR. SPEECHER: No, Mr. President. I am afraid I still persist in making myself greatly misunderstood and very unclear. I am sorry.

THE PRESIDENT: Well, we have just about four and a half minutes. Take your time and tell us exactly what your views are and we will try to be helpful in working out some sort of procedure.

MR. SPEECHER: We have never attempted to find out at any time why defense counsel wanted to talk to any particular people and have never objected on that ground, so I think that answers your last question and 100 per cent in the clear. Now, my point is that there comes a time when applications for subpoenas of witnesses mean just exactly what those applications say, Your Honor; namely, that the defense wants to bring a certain witness in here and put him in that witness box. Now, in connection with that problem before the IIT, I have here in my hands a very substantial amount of documentation which I think is the result of a tremendous amount of work about a very tremendous problem. I am only suggesting to Your Honor that probably we are wasting time here by trying to become too profound about this matter until we have at least seen what problems did arise in IIT in that connection.

THE PRESIDENT: Can we sum it up this way? Is it the purpose of the parts of the IIT record that you are calling to our attention to set up some sort of machinery that will prevent the bringing in of a large number of unnecessary witnesses; in other words, that the Tribunal may exercise a sound discretion as to whether or not it is important to the defense or prosecution, as the case may be, whether that witness or those witnesses be brought in? Is that the effect of it?

MR. SPEECHER: Partly, but also more, questions of translation are involved, you see, because these things result in documents which then

have to be translated and brought before Your Honor.

THE PRESIDENT: Then it would be correct to say that the purpose of it is to have some reasonable control on the number of witnesses that are brought here, in view of the burdens of bringing them here and the burdens of handling the translation and processing of their evidence if they are brought here, is that the idea?

MR. SPROCHER: Yes.

THE PRESIDENT: Maybe we will not have those problems. They may not arise. If they do, in the meantime, we will familiarize ourselves with that record and meet it at the proper time, but it may be that we will not have to cross that bridge, certainly not if there is no abuse of the privilege of bringing witnesses. Do you have something to say, Doctor?

DR. SEIDL: Mr. President, Dr. Seidl for Duxrfield. In connection with what was just stated by Mr. Sprocher, I do not want to answer anything, but I should like to make a suggestion which might be very appropriate to carry out the expedition of these proceedings desired by the Tribunal. This is in connection with quite another subject. I should be very grateful if the prosecution could give us the names of the witnesses regularly and exactly that it intends to bring on the same day or on the next day. If, among the 30 witnesses of whom we have affidavits, we are confronted with witnesses for whom we are not prepared, it will make cross examination very difficult and will prolong it. Therefore I should like to ask the prosecution to give us three or four names in the proper sequence in which their examination is intended. I am convinced that the cross examination will then be facilitated and expedited.

THE PRESIDENT: That would be a very desirable arrangement if it could be done, but I think counsel will recall that the prosecution pointed out very serious difficulties that it is confronted with in the matter of transportation and getting these witnesses from other countries here. We assume and shall expect that the prosecution will do its very best to advise counsel for the defense as much in advance and as definitely

as possible its schedule of production of witnesses. Beyond that, the Tribunal does not feel disposed to establish any regulatory procedure because of the very fact that it is more or less a troublesome problem of getting these witnesses here. Moreover the prosecution can, we take it, there will be no objection whatever to advising counsel for the defense definitely of the next witnesses and as nearly as possible when they will be called. We just ask a good faith cooperation between you gentlemen in that respect without imposing on you any ironclad regulations that may very much embarrass your obligation to your parties.

MR. STONE: The prosecution is happy to be able to say at this time that we do have and will make available to the defense a list of at least five to eight witnesses who have arrived and are available and, if possible, the exact order in which they will be called.

THE PRESIDENT: That will be very, very helpful to all and I may say it will help the Tribunal if we know, too, because at our spare time we can then refresh our recollection as to the contents of these affidavits and be in a better position to discharge our responsibilities as far as controlling the cross examination is concerned. Have you anything further? Will you be ready after lunch to call a witness?

MR. MINSKOFF: Yes, Your Honor.

THE PRESIDENT: Who will the witness be?

MR. MINSKOFF: Mr. Hess.

THE PRESIDENT: What is his nationality?

MR. MINSKOFF: Pardon me. We have both here, but Your Honor has indicated that we would all like for Mr. Herzog to go on as we announced earlier this morning. Herzog will go on first.

THE PRESIDENT: Very well, Herzog will be the prosecution's next witness, gentlemen. I think you have already given us a book and page where his affidavit may be found. The Tribunal will now rise until 1:30.

(A recess was taken until 1330 hours.)

AFTERNOON SESSION

(The hearing reconvened at 1330 hours, 12 Nov 1947)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Are you ready to call your witness?

MR. SPRECHER: Yes, Your Honor.

THE PRESIDENT: Marshal, bring in the witness. Is this a Czech national?

MR. MINSKOFF: No, this is an Austrian national. This is Gustav Herzog, Your Honor.

THE PRESIDENT: I have no special form of an Austrian oath. Do you know anything about it?

MR. MINSKOFF: No, I don't.

THE PRESIDENT: Do you know, Mr. Sprecher?

MR. SPRECHER: Defense counsel indicates to me that it is practically the same, if not the same, as the German.

THE PRESIDENT: Thank you. Mr. Witness, you will remain standing for the purpose of being sworn as a witness. Raise your right hand, say "I," and state your name.

THE WITNESS: I, Dr. Gustav Herzog----

THE PRESIDENT: Now repeat after me, "swear by God the Almighty and Omniscient that I will speak the pure truth and will withhold and add nothing." You may be seated.

(The witness repeated the oath.)

THE PRESIDENT: Now, Mr. Witness, before your examination starts may we remind you of the fact that it is necessary to translate your testimony into English so that it reaches the Tribunal. For that reason, it is very important that you speak slowly and deliberately, that you pause between the question that is asked you and your answer, and that you make your answers as direct and brief as possible. Please do not feel called upon to volunteer any information beyond a complete answer to the question. If further information

is desired, counsel is at liberty to ask you additional questions. If you will bear that in mind during the course of your examination and cross examination, it will facilitate the trial of this case and be very much appreciated by the Tribunal. The Prosecution may proceed.

MR. MINSKOFF: May it please the court, the Prosecution would like to announce for the benefit of defense counsel and the Court the names at this time of the witnesses who will follow. The first name is Jan Stern, the second is Ludwig Hess, the third is Charles Joseph Coward, the fourth is Leonard Dales, the fifth is Norbert Wollheim, and the last is Felix Rausch-that we have on this list.

THE PRESIDENT: Thank you.

MR. MINSKOFF: The Prosecution would like to offer at this time into evidence NI NO. 12069 as Prosecution Exhibit 1468. It appears in Book 79 on page 42 of the English and 44 of the German.

THE PRESIDENT: With reference to the exhibit number, I think we omitted a number the other day. Does that take care of that discrepancy, Mr. Secretary?

THE SECRETARY GENERAL: It will be taken care of.

THE PRESIDENT: Very well.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q. What is your full name?

A. Dr. Gustav Herzog.

Q. Where do you reside?

A. Vienna, Fourth District, Belvedere-gasse 23.

Q. At the time of your arrest, what was your profession?

A. A journalist.

Q. And the date of your arrest was?

A. 28 June, 1938.

Q. What is your present occupation?

A. I am a journalist again.

Q. With respect to the affidavit in evidence, are there any corrections or additions that you wish to make?

THE PRESIDENT: Pardon me, Counsel. Just for the record, perhaps you had better identify the exhibit number now and the book and page where it is found.

MR. MINSKOFF: It is Prosecution's Exhibit 1468. It is found in Book 79 at Page 42 of the English and 44 of the German.

THE PRESIDENT: Thank you.

BY MR. MINSKOFF:

Q. The question to the witness was, were there any corrections or additions that you care to make to the affidavit?

A. Yes.

Q. Will you state them, please?

A. I should like to correct one of the last paragraphs of the affidavit. It is a question of figures.

Q. Will you please go ahead?

A. I don't know the paragraph by heart. It is the paragraph giving the figures of the prisoners in Buna and the mortality figures.

Q. What is the nature of the correction you wish to make?

A. I should like to say that the figures are too high. I should like to give lower figures, as follows: The number of prisoners who went through Buna from October 1942 to October 1944--that is the period of time when I was in charge of the office in Buna -- was 120,000; thereof 30,000 dead. The number of prisoners in the 28 subsidiary camps was about 35,000 when we left the camp, and ----just a minute, I believe I made a mistake the first time. Did I say 60,000 or 120,000? I don't remember, I believe I made a

mistake.

Q. It was 120,000 in the Affidavit.

A. Yes, that is what I want to correct. The affidavit says 120,000. The number at Buna was 60,000, and the number in all of the camps was 120,000.

Q. Are there any other corrections or additions you wish to make?

A. No.

MR. MINSKOFF: The witness is with the Defense.

THE PRESIDENT: The defense may cross examine.

CROSS EXAMINATION

BY DR. SEIDL: (For the defendant Duerrfeld)

Q. Witness, I want to start out from the corrections that you have just now made. Under No. 13 of your affidavit you say, and I quote, "I estimate -- and I repeat that I was for a long time the head of the office -- the number of the living at Buna Monowitz at the end at about 10,000 prisoners to about 120,000 dead." Did I understand you correctly if I say that instead of 120,000 you wish to put the number of 60,000; is that correct?

A. Just a moment, please. I have to find the quotation.

Q. I believe it is under No. 13 of your affidavit.

A. Yes, I want to correct that. At the end there were 10,000 but the total number of prisoners who went through Buna was 60,000.

Q. Is that "went through" identical with the number of dead?

A. No.

Q. I have to tell you, however, that in your affidavit you say at the end, "a number of dead of 120,000". Is it correct if I say that the figures of 120,000 and 60,000 cannot be brought into relationship at all, since you are thinking of different things in both cases?

A. It is true that the number of dead and the number of people who went through the camp are two different things.

Q. However, I must ask you, Mr. Witness, how you came to make the assertion that at the end, 10,000 prisoners who were alive were confronted with a number of 120,000, who were dead, and today you say that one cannot speak of 120,000 at all, and that only 60,000 inmates passed through the camp? Please explain that contradiction.

A. If I may say so, I have a so-called photographic memory. When I came here and thought carefully about how the office looked, I saw before me the whole desk with the card index, and I remember exactly how it looked. The mistake arose because I was thinking of the card index which referred to all of the auxiliary camps, and I mistakenly assumed that that referred to Buna alone. There is where I get the figure of 120,000. This doesn't refer to Buna, but

to all of the subsidiary camps. This figure is quite correct.
I can explain it to you if you like.

Q. Then I may conclude, however, that in this point,
at any rate, your photographic memory left you in the lurch.
Please answer that question, yes or no.

A. No, it certainly didn't.

Q. You say, furthermore, that all of the auxiliary
camps had a number of dead of about 250,000 as compared to
35,000 alive? Do you insist on this figure?

A. No. The number of prisoners who went through the
auxiliary camps was about 120,000.

Q. That is the people who passed through?

A. Yes.

Q. But again here it says, "the approximate figure
of people dead is 250,000", and you said just now that alto-
gether only 120,000 prisoners passed through the camps. That
seems to me to be a very essential difference.

A. That is an essential difference.

Q. Witness, I shall return to this point later. I
shall ask you something else now. For what reason were you
arrested on the 28th of June 1938?

A. I was a contributor to American and English news
agencies and newspapers because of my anti-Nazi and anti-Hitler
way of writing.

Q. Were you arrested in Austria?

A. Yes.

Q. Did you belong to any political party at that
time?

A. Do I have to answer that question?

Q. Yes.

A. I have never belonged to any party in my life.

Q. And you do not belong to any party today?

to all of the subsidiary camps. This figure is quite correct. I can explain it to you if you like.

Q. Then I may conclude, however, that in this point, at any rate, your photographic memory left you in the lurch. Please answer that question, yes or no.

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A. I was a contributor to American and English news agencies and newspapers because of my anti-Nazi and anti-Hitler way of writing.

Q. Were you arrested in Austria?

A. Yes.

Q. Did you belong to any political party at that time?

A. Do I have to answer that question?

Q. Yes.

A. I have never belonged to any party in my life.

Q. And you do not belong to any party today?

A. No, I do not belong to any party today.

Q. You were then in the Concentration Camp Buchenwald?

A. Yes.

Q. Where did you go from Buchenwald?

A. Auschwitz.

Q. And how long were you in the main camp (Stammlager) at Auschwitz?

A. Approximately one or two weeks.

Q. And then you went to Monowitz?

A. Yes, then I was sent to Monowitz-Buna.

Q. How long were you in the Farben plant in Auschwitz yourself as a worker, and on what construction sides did you work?

A. I was working in the I. G. plant twice. Once I was unloading railroad cars for about 3 weeks, and the second time I was working on the construction of a miniature railway for about three weeks.

Q. And then you went to the office?

A. I was in the office before and afterwards again.

Q. This office was in Camp IV, wasn't it?

A. Just a moment please, if you mean Monowitz-Buna by Camp IV, yes.

Q. If I say Camp IV, then I mean the Camp Monowitz or the Buna Camp.

A. Yes.

Q. In October 1944 you were transferred. Where did you go then?

A. To an auxiliary camp of Buna, called Althammer.

Q. How many inmates were in that camp?

A. About 500.

Q. For what firm were these inmates working?

A. I don't know.

Q. You were there yourself, Witness. Did you not work yourself?

A. No, I was working in the office.

Q. But you must know whether these 500 prisoners worked on a construction site of Farben, or was that another firm?

A. I don't know.

Q. Where is this place situated.....this Althammer Camp?

A. I believe near Kattowitz.

Q. Did it happen frequently that inmates, like you, were transferred from one labor camp to another?

A. I do not know what you mean by "frequently", but it happened constantly that individual prisoners or smaller or larger groups were sent to an auxiliary camp of Buna, or to Auschwitz, or to other camps in Germany, Buchenwald, Flossenbuerg.

Q. You yourself were transferred from Althammer to Buchenwald, where you originally came from?

A. That's right, through Gleiwitz IV.

Q. Witness, you say that these 35 labor camps.....

A. 28.

Q.28, I accept your figure.....that these 28 labor camps were subsidiary camps of Buna?

A. Yes.

Q. Is it correct if I say that all of these labor camps, including the camp of Monowitz, were really labor camps of the Concentration Camp Auschwitz?

A. That depends on which time you are talking about. In the beginning, Buna was an auxiliary camp of Auschwitz, and was called Auschwitz III. Later it became an independent

camp, a main camp (Hauptlager) as we called it, with its own administration and its own auxiliary camps, and as far as I am informed, it had a certain degree of independence.

Q. Then it was evidently the case.....and please correct me if I am wrong.....that the administration of these entire 28 labor camps was in Monowitz, and that the chief of these 28 camps was Hauptsturmfuehrer Schwarz? Is that correct?

A. That is only partly correct. The administration of these 28 auxiliary camps was in the hands of Hauptsturmfuehrer Schwarz as far as SS matters were concerned, but the individual camps, as far as I am informed, were not administered by the SS from the point of view of the work; the SS merely supervised them as far as escapes were concerned and discipline in the camp.

Q. Witness, I put to you that the only labor camp which was under the jurisdiction of Farben, where the inmates were working for a plant of Farben, was Camp IV in Auschwitz, and that the other 27 or 28 labor camps consequently, belonged to other enterprises; do you agree with me in that?

A. That is completely unknown to me. I have no idea which of the auxiliary camps were also working for I. G. Farben or for some other firm.

Q. In your affidavit it can be seen that you were the man in charge of the roll? (Rapportfuehrer)

A. The Rapportfuehrer was an SS man. I kept the lists.

Q. You were the man who had to take the roll-call in the administration of these 28 Labor camps? The administration of your office did not extend only to Camp IV Monowitz but to the entire 28 labor camps; is that correct?

A. No, one cannot say that. There is no question of administration of the part of a prisoner. I was just in charge of the card index in my office. I had the card index of the main camp Buna and of the auxiliary camps, and I had to give information as to where a particular prisoner could be found and such purely technical details. But prisoners never had anything to do with the administration of a camp.

Q. How often did you yourself see Dr. Duerrfeld in the Monowitz Camp, and what occasions can you remember?

A. I saw Dr. Duerrfeld several times. I cannot give you the exact number, but quite frequently. The occasions that you mention were of various kinds. The first personal impression that I gained was when a selection was made in the first months of 1943, when I saw Dr. Duerrfeld together with Hauptsturmfuehrer Schwarz, Obersturmfuehrer Schoettl, and some other SS men. The other times were when Dr. Duerrfeld came to the camp with Arbeitsdienstfuehrer Stolten, when details of a specialized nature were set up in the technical field, such as electricians, or for administrative work, such as bookkeepers, that would be more or less the nature of the second occasions.

Q. I believe that answers sufficiently. You used the expression, "selection" a short while ago. Do you mean by that the process that you described under No. 5 of your affidavit, where, according to your description, Dr. Duerrfeld searched for certain professions such as electricians, etc?

A. By "selection", we former prisoners mean the selection of prisoners to be sent to the gas chambers.

Q. For that it would be necessary that the person

who was present at the time would have to know what happened to those prisoners who were not fit for heavy physical labor; could not any member of Farben assume that an inmate who was too weak to carry cement bags would be used as a clerk or in lighter work in some other labor camp or those 28? Do you agree with me?

A. I do not agree with you at all, doctor. It was a matter of course that at Auschwitz and in the neighborhood, everyone, from the little children up to the Generaldirektor, know that these were people who were no longer worthy of eating the bread that was given to them, so they should be gassed.

Q. Did you yourself ever discuss that matter with a Generaldirektor?

A. No, I never talked to a civilian.

Q. Then it is an assumption on your part, and a conclusion that you are making on the basis of your other observations?

A. I can support my assumption by saying that in the short time that I worked outside myself, and in the long time that I was in the office, and my fellow prisoners told me about events outside, I got the 100 per cent impression from conversations that every civilian in the I. G. terrain knew what gas was; that they spoke cynically about a cyclone because the gas was called Zyklon.

Q. Witness, but you yourself did not discuss such a question with any civilian; you just said that yourself.

A. No.

Q Then you know that only from hearsay and from other people.

A Yes.

Q That is enough, you don't have to say any more. Where did you yourself sleep, Witness, while you were working as a clerk in Monowitz? Did you sleep in a barracks or in some other place?

A I slept in barracks, of course. Only, in the course of time, the type of barracks varied. All prisoners who worked in the office were put together in one barracks. Originally, it was with everyone together, and later it was divided up so that they would be easily available, so that they could be called out when there were new arrivals, you see.

Q How many people were housed in this barracks in which you and the other clerks lived? Approximately; one more or less makes no difference, Witness.

A They were not full barracks, just parts of barracks. They were therefore much smaller. Sometimes there were only 40, perhaps only 30, but as I say, these were not whole barracks, merely parts of barracks.

Q How many inmates lived on the average in such a barracks, so far as you know, from your own observations at various times?

A 300 or 400 on the average.

Q And how large was the maximum strength in the camp?

A 11,000 - odd for a very short time; at the end it averaged around 10,000.

Q Is it correct if I say that toward the end of 1944 there were not 54 barracks ready as was said previously, but 60 barracks, and that 51 were used for living purposes alone; is that known to you?

A Yes, it is possible that there were 60 at the end, but that 51 were living purposes cannot be right. There were various kinds of barracks. The Reich Germans had barracks, and they had the opportunity to live more comfortably. Blocks were arranged for them where they had beds to themselves, and those were the smaller barracks on the left side of the street. The other barracks where the non-German

prisoners lived were over-crowded, and then there were all of the workshops.....

Q Well, even if only 50 are assumed, and one believes that there were 300 persons in one barracks, that would result in a number of 15,000 inmates, and such a strength never existed in Camp IV? Is that right?

A That would be, yes, if it were true that all of the barracks were used for living purposes, but there were very many barracks that were workshops, storerooms, offices, labor service, and of course, the smaller barracks which had fewer inmates where the Germans lived, and the difference was distributed among the other barracks which were thus over-crowded.

Q The distribution of the inmates to the various barracks was a matter of the SS; isn't that correct? Please, if you can, answer the question yes or no, Witness.

A The SS was not particularly interested in that. The prisoners who came into the camp were assigned to the barracks by us.

Q Then the question of transfer was an internal affair of the inmates, - internal administration?

A With the limitation that so far as we get orders to assign details to one block, then we had to do that.

Q But normally it was left to the inmates themselves how they would distribute the newly arrived inmates; is that correct?

A We distributed the prisoners by trying to fill the blocks as equally as possible, to make more or less human living conditions possible.

Q Mr. Witness, you said previously that the barracks were not all alike. I put to you now that according to our plans - these are the original plans - all living barracks were alike, and that these were the so-called Reich Labor Service (RAD) barracks. Is that right?

A That is not right. Most of the barracks that we had were wooden barracks and only at the end were the barracks built which I said were on the left side of the street; they were of an entirely different type of construction.

Q Furthermore, you say that an order existed according to which no sick person was permitted to remain in the hospital longer than two weeks. Did you yourself see this order, or do you know who originated the order, or do you know who originated the order, or do you know this only from hearsay?

A I do not believe that a prisoner could see a written order of an SS man. I have that from hearsay, since I know that SS doctors told the prisoner doctors over and over again and reminded them of this order.

THE PRESIDENT: Just a moment. There is no use in going into details on matters that are admittedly hearsay.

IR. SEIDL: Then you do not have to make any further explanations on this point, Mr. Witness.

Q Witness, is it correct that the preparation and distribution of the food in Camp IV was an affair of the SS; or of the internal administration of the inmates; that Farben had nothing to do with it?

A From the moment on when the food was in the innercamp the prisoner cooks prepared it under the supervision of the SS.

Q You stated further that dozens of inmates froze to death. Did you see that yourself, or did you only hear that, since you yourself were only in the plant a short while?

A I saw that myself, many, many times.

Q Do you know that during the winter, in the area of the plant alone, there were more than a thousand fireplaces at which the inmates could warm themselves?

A No.

Q You never saw them?

A No.

Q Were you ever in the I.G. plant during the winter?

A No.

Q Oh, you weren't there at all?

A No, not in the winter.

Q Do you know, Witness, that in Auschwitz, as well as in Birkenau, large hospitals existed which were equipped with very modern medical facilities, such as X-ray machines, operating rooms, and so on, and that frequently patients were sent from the hospital of the labor camps into these large camps so that they could be cured there?

A I know that hospitals existed there from hearsay. I did not see them myself.

Q You say that the number of deaths in Camp IV was very large? I want to put to you now that, according to the hospital book, which covers the period of one year, that we have available, in one year only 579 deaths occurred? How can you explain this contradiction between that figure and the figure that you mentioned?

A I do not know the hospital book that you mentioned. It can refer only to a definite period. It can refer only to the prisoners who died in this hospital and were taken out as corpses. The possibilities of death were manifold, however, and many more people died in other ways -- in the gas chambers, for instances, starved to death, and collapsed. This figure was big enough, but it is not to be compared with the gas chambers.

DR. SEIDL: I have no further questions to put to the witness.

CROSS EXAMINATION

DR. DIX, counsel for the defendant Schneider:

Q Witness, you sat in the office and were in charge of the card index on the prisoners?

A Yes.

Q And you did that for a considerably long time, I think one or

two years?

A I believe I was in the office proper for 15 months or 16 months.

Q How about the card index of the people who were removed from the camp; what happened to those cards?

A The card index was like this: On the one side were the cards of the people who were in the camp. Now, if a prisoner left the camp, then the card was taken out, the date was written on it, the place to which he had been sent - and to the cases of death the reason was recorded - the fact that one leaves a camp was of various natures. There were releases, there were transfers, there was death in the camp, gas transports, escape - these were all ways in which one could leave a camp.

Q And this taking out of the cards and the remarks on the cards were made by you?

A In part I did it myself; in part it was done by my comrades who also worked in the office.

Q Then you were active in the case of selection, by pulling out these cards and making notes?

A The selections took place somewhere else.

Q But the selection had these results. You said yourself that the selections had these results in the card index.

A Yes. It was like this: Every block had a block card index. Every prisoner who was subjected to a selection was given the block card index cards, and these cards were sent to me in the office, and in the office I examined these cards (which were not always quite correctly kept — sometimes they were kept by prisoners who weren't too intelligent); I compared them with my cards and I took out my cards and recorded the information on my cards.

IR. DIX: Thank you.

IR. SEIDL: Dr. Seidl for the defendant Duerrfeld. Mr. President, I have only one more question to put to the witness.

BY IR. SEIDL:

Q Witness, under No. 13 of your affidavit you say, "From Monowitz, which was later a main camp, uncounted thousands of prisoners were brought into the subsidiary concentration camps which, at the end, to my knowledge, numbered 38. The total number in all the auxiliary camps was, so far as I remember, about 35,000 altogether."

Witness, I would like to have you answer the question: how many thousands of prisoners were sent from Monowitz, Camp IV, to the other labor camps. Can you give me an approximate number? 10,000, 15,000?

A I could....

Q You say "uncounted thousands".

A According to my estimate, about 10,000 were sent to the auxiliary camps and to other camps which were not auxiliary camps of Buna.

Q Altogether 10,000?

A Yes.

DR. SEIDL: I have no further questions.

THE PRESIDENT: Any further cross examination of this witness?
Any redirect?

MR. MINSKOFF: I should like to ask a further question, your Honor.

REDIRECT EXAMINATION

BY MR. MINSKOFF:

Q Mr. Herzog, could you give a breakdown of the figure of 60,000 that went through the camp, indicating how many went to other camps and what may have happened to others. — the breakdown of the 60,000 figure?

A 10,000 were sent to auxiliary camps and other camps, 10,000 were left when the camp was dissolved. I can't give any definite figure, but it is probably right within a thousand one way or another. Another 10,000 were released, as these were "E" prisoners — labor training prisoners. 30,000 died.

MR. MINSKOFF: That is all.

THE PRESIDENT: Is there any further cross examination?

DR. SEIDL: Dr. Seidl for the Defendant Duerrfeld.

RECROSS EXAMINATION

BY DR. SEIDL:

Q Witness, do you maintain your figure of 60,000 even if, from the affidavits of other Prosecution witnesses, it can be seen that altogether only 30,000 inmates passed through Monowitz?

A Then I can only tell the other prisoners that they were not in charge of the office but I was.

DR. SEIDL: I have no further questions then.

THE PRESIDENT: Now, gentlemen, are you through with this witness?

DR. DIX: Dr. Dix for Schneider.

BY DR. DIX:

Q You said just now that you were director of the office. You said previously that you conducted the selection of those cards in the

card index. Didn't you have an opportunity to prevent these selections?

A If I had attempted to do that, Counsel, I would probably not be here today.

DR. DUX: Thank you very much.

DR. HOFFMANN: Dr. Hoffmann for the defendant Ambros.

BY DR. HOFFMANN:

Q Witness, in your affidavit -- let me put it this way. You said a short while ago that you didn't speak to civilians. Is that correct?

A I believe I talked to a Dutch forced laborer at one time, if you call him a civilian.

Q No; but generally it is correct?

A Yes.

Q And in your affidavit you say, on the other hand, however, that you can derive the 100% guilt of I.G. Farben because you heard from unknown I.G. men that they were guilty?

A Yes, but I didn't talk to them. They talked and I listened.

Q Then in your affidavit you further state that the individual deaths were much higher in Buna than in any other concentration camp?

A I didn't say that.

Q You say "The system of Farben in letting only the fully fit work in Buna was responsible for far more deaths than the individual murders in other concentration camps."

A Yes.

Q But I can say to you from what we know here and the comparison with the number that you have given, it cannot possibly be correct.

A Then I can put the following comparison to you. I was in Buchenwald before and afterwards. Buchenwald is a camp that existed for eight years, from 1937 to 1945, and the almost exact figure of eight years -- and the horrors in the first years were enormous, there were many murders. The figure was 52,000 in eight years. According to my fairly accurate estimate, in the two and a quarter years at

Suna there were 30,000 deaths!

Q Witness, may I ask you further: You said that you had been in Auschwitz two weeks?

A One or two weeks.

Q Under No. 1 of your affidavit you stated 12 weeks.

A That must be a printing mistake. One or two weeks I meant. The hyphen is missing.

Q DR. HOFFMANN: That is all.

THE PRESIDENT: Gentlemen, any further examination of this witness?

MR MINSKOFF: Excuse your Honor. I'd just like to have the record show that the affidavit said one to two weeks.

THE PRESIDENT: Yes; it is so understood. Then the witness is excused. Call your next witness.

(Witness excused)

MR. SPEECHER: Mr. President, if I may interrupt just a minute to catch up on the record on one simple point, I am now handing to the Secretary a number of copies of NL-10734, which was received in evidence either last Thursday or Friday as Prosecution Exhibit 1467. At that time I promised to forward copies to both the Tribunal, the Secretary, and the Defense counsel. The copies had been so furnished now.

I might only make this suggestion, that you might take your copies and perhaps insert them in Document Book 54, Page 124 of the English and the German Page 73, so that they will follow after the affidavit of Dvoracek, which is Exhibit 1123, Document No. NL-9632, since that document was brought out during the redirect examination of Dvoracek. That is all.

THE PRESIDENT: Call your next witness.

MR. MINSKOFF: Mr. Stern. Jan Stern.

THE PRESIDENT: Bring in the witness. What is the nationality of the witness?

MR. MINSKOFF: The affidavit of Jan Stern....

THE PRESIDENT: What is his nationality?

MR. MINSKOFF: Czechoslovakian, your Honor.

MR. SEIDEL: Dr. Seidl for the defendant Duerrfeld. Mr. President, the witness Stern was mentioned for the first time this morning, that is, he was to appear this afternoon or, rather, it was mentioned this afternoon that he was to come this afternoon. We were prepared for the witness Hess or the witness Dreister, and I ask you to give me an opportunity to read the affidavit of this witness, since it is, of course, not possible for me to know these three to four hundred pages by heart.

THE PRESIDENT: What does the Prosecution say? Can you call in those other witnesses as well?

MR. SPRECHER: Mr. President, this is one of the affidavits which has been in the document book for several weeks. We have given the official —

THE PRESIDENT: That is all true, but there are about 1600 exhibits here in this case, and it is not an unreasonable thing, where you can do it, to call a witness that counsel has some immediate advance notice of. I dare say that any of us would have to refresh our recollection as to the contents of these affidavits if we had to conduct the examination.

I am not inclined to grant any extensions on this account because, as we have said before, counsel is no worse off than if they had to cross examine an oral witness who has just testified, but if you can use a witness of which they have a little advance notice, I think it will facilitate the examination. Now, what is your situation? Do you have a witness that you can use that you have told them about?

MR. MINSKOFF: We can put Mr. Hess on, your Honor.

THE PRESIDENT: Very well, then this witness will be temporarily excused and bring in Mr. Eess instead. Now, what's the nationality of the witness Eess?

MR. HINSKOFF: He is German.

THE PRESIDENT: Very well.

MR. HINSKOFF: His affidavit appears in Book 75 as WI-4191 on page 116. It has not been introduced in evidence yet.

THE PRESIDENT: Perhaps for the sake of the record the document had better be introduced before you examine the witness.

MR. HINSKOFF: The Prosecution at this time offers WI-4191 as Prosecution's Exhibit 1469.

LUDWIG EESS, a witness, took the stand and testified as follows:)

THE PRESIDENT: The witness will remain standing for the purpose of being sworn, raise his right hand, say "I" and state his name.

THE WITNESS: I, Ludwig Eess.

THE PRESIDENT: And now repeat after me. "swear by God, the Almighty and the Omniscient that I will speak the pure truth and will withhold and add nothing. (The witness repeated the oath). The witness may be seated. Now, Mr. Witness, the Tribunal would like to admonish you to speak slowly and deliberately and to make your answers as direct, simple, and brief as possible. Do not feel called upon to amplify your answers or to volunteer information. If counsel deems your answers insufficient or incomplete he will ask another question. The witness is with the Prosecution.

DIRECT EXAMINATION

BY MR. HINSKOFF:

Q. Mr. Eess, what is your full name?

A. Ludwig Wolf Eess.

Q. Where do you reside?

A. In Frankfurt on the Main.

Q. With respect to your affidavit on January 23, 1947, which was introduced in evidence as Prosecution Exhibit 1469, are there any

corrections or additions you wish to take?

A. I found out that it isn't stated in this affidavit that I was in Buchenwald; and in connection with the typhoid epidemic I stated that the water had been contaminated by typhoid bacteria. I would like to correct that. They were coli bacteria.

Q. Are there any further corrections or additions?

A. That's all.

JUDGE MORRIS: Counsel, just a moment. I think there must be a typographical error in the English copy of the affidavit of Hess perhaps. It's the birth date. It says "I was born in May 1931, was arrested in February 1935 for preparation of treason."

MR. JINSLON: May 1915, your Honor. The German is correct. The English is incorrect.

JUDGE MORRIS: Very well.

THE PRESIDENT: Are you through, Mr. Prosecutor? The Defense may cross-examine.

CROSS EXAMINATION

BY MR. SAIDEN: (Counsel for the defendant Duerrfeld)

Q. Witness, you were arrested in 1935?

A. Yes.

Q. By whom were you arrested?

A. By the Secret State Police.

Q. Were you tried?

A. I was.

Q. What court?

A. The Oberlandesgericht in Lassel.

Q. And what was the object of the proceeding? What was the charge?

A. Preparation for treason.

Q. Did you at that time belong to any party?

A. No.

Q. Do you belong to a party now?

- A. No.
- Q. And you were given five years in the penitentiary?
- A. Yes, five years.
- Q. To what concentration camp were you sent?
- A. First to Sachsenhausen and subsequently to Dachau, Buchenwald, Auschwitz, Jora, and at the end to Theresienstadt.
- Q. When did you come to Auschwitz?
- A. I came to Auschwitz on the 25th or 27th of October.
- Q. And when did you come to Camp 4, Monowitz, I. G. Farben?
- A. We were in Auschwitz a few days and then went to Monowitz.
- Q. Witness, I should like to point out something to you. It would be a good thing if you would wait after my question so that the interpreters can keep up with you. How long were you in the Monowitz Camp, Camp No. 4?
- A. From the first day prisoners were there at all until 18 January 1945.
- Q. You were one of the first inmates that were in Camp 4?
- A. Yes.
- Q. Is it correct that previously inmates who were working in the Farben plant were brought either by rail, by motor-car or on foot from the Auschwitz concentration camp?
- A. I was not in Auschwitz at that time. I could not observe that.
- Q. But you can say that no inmates were housed in the Farben area, as far as you heard?
- A. From hearsay I know that prisoners had been there before.
- Q. How long were you working at the construction site yourself?
- A. Until about the end of 1942 I worked at the plant.
- Q. That is only a few weeks?
- A. That's right.
- Q. What functions did you have to perform there?
- A. I was in the detail unloading gravel, Detail No. 7. Also

digging work.

Q. What was your further work during your stay in Camp 4?

A. I was in the hospital, at first as a patient, and then I became night-watchman.

Q. Did you sleep in the hospital, or were you housed in one of the barracks?

A. I slept in the hospital.

Q. How many doctors and medical assistants were working in this hospital altogether?

A. That varied. It depended on the time. In the beginning there were 16 prisoners working as medical personnel. That included the senior inmate of the hospital and the doctors. In the end there were about 50 approved medical personnel.

Q. And among them there were also physicians who were working there as prisoners?

A. Yes, prisoners were working as doctors.

Q. Can you remember how large this number was approximately?

A. That varied a great deal. At the end perhaps 25 prisoners were working as doctors.

Q. Twenty-five prisoners were working as doctors in the hospital?

A. Yes.

Q. How many beds did the whole hospital contain at the end in 1944 and the beginning of 1945?

A. About 700 beds at the end, I believe.

Q. Did you ever hear that patients were permitted to stay in the hospital only two weeks?

A. Yes, I heard of that. In the beginning, when I was still a patient, I was released for a few hours for that reason, so that the entry in the book would be that I had only been a patient for two weeks.

Q. And then you were again entered anew at another spot in the book?

A. Yes.

Q. And the inmates did that on their own?

A. Yes.

Q. It was comparatively easy then, to evade this rule, if it existed at all. Is that right?

A. No. As far as I know, such cases were very rare. I had been in other camps before, and for that reason it was possible for an exception to be made in my case.

Q. Was this rule a regulation of the SS, or from whom did this rule come? Do you know anything about this? Did you yourself see a written order to this effect yourself?

A. As far as I know, it was an order of I. G. Farbenindustrie, because I. G. Farben did not want to pay the expenses for sick prisoners for more than two weeks.

Q. That's what you heard?

A. Yes.

Q. But you did not see anything in writing about that?

A. I was in the hospital so long that I can say that this order is absolutely certain, because in the course of two years this was the constant practice.

Q. Is it correct that the entire hospital, these 700 beds, was administered by the SS and partly by the inmates themselves? Those inmates who were physicians? And is it furthermore correct that Farben did not interfere in the internal affairs of this hospital? Do you agree with me?

A. No, I am of the opinion that the SS was only in the camp on loan, as it were, and consequently was responsible for certain technical things but not for obtaining beds for patients, linen, etc.; the entire inventory of the blocks and the wooden buildings themselves were supplied by Farben.

Q. Witness, I agree with you that the barracks, the blocks, and so on, were constructed by Farben and that they expended no less than five million Reichsmarks. However, that doesn't change the fact that the entire internal administration of the camp was a matter of the SS, or the SS physicians. And you will admit, further, that the inmates who came to Camp 4 had previously been in other camps, but at any rate they came there under the supervision of the SS, and they remained under the supervision of the SS. Is that correct?

A. The supervision of the prisoners and the disciplinary authority in the camp was exercised by the SS, but the directives for the measures ordered resulted from the wishes of I. G. Farben.

Q. But you yourself never saw any such directives? You can answer that question with "yes" or "no", Witness.

A. I did not see any document.

Q. I shall now turn to another point, Witness. You say that Farben had a direct railroad connection to Lenowitz. Behind you there is a map, which you probably saw long ago, on which the plant site and Camp 4 are drawn in. Please show me where the railroad connection leads into Camp 4.

A. I have not seen it yet; I will look at it.

THE PROSECUTOR: Just a moment, now. It won't help the record for the witness to point out points on the map. He may look at the map, refresh his recollection, and then describe, by reference to the map, what he wishes to say or what locations he wishes to identify. In that way we will have it in the record, and we can check his testimony against the maps which are also available to us.

You may first, Mr. Witness, if you have the question in mind, stand up, look at the map, familiarize yourself with it as far as possible, and then sit down before the microphone and answer counsel's question.

(The witness examined the map)

THE WITNESS: On this chart here the track connection which

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and answer counsel's question.

(The witness examined the map)

THE WITNESS: On this chart here the track connection
which .

actually existed is not indicated. The railroad line ran above the prisoner's camp, along the green line, which represents the road alongside the camp.

BY MR. SAULS:

Q. Do you want to say, then, that this track siding led directly into the fence of Camp 4?

A. No, the tracks ran at a distance of 20 meters, along the north side of the camp, outside of the fence of the prisoner's camp, and directly inside the fence of the plant area.

Q. Well then, witness, it was evidently so that the railroad connection of which you spoke led from the railroad yard, in the lower left corner, into the plant area?

A. I know only that the track went alongside the camp and, in the east, led to the station of Dory.

Q. Witness, is it correct that immediately north of Camp 4 was the main road which led from the town of Auschwitz to the East?

A. Yes.

Q. Is it furthermore correct that immediately north of this road there was the fence of the Farben plant?

A. Yes.

Q. Is it then not completely clear that this railroad was within the plant fence?

A. Without a doubt.

Q. Then it is undoubtedly not correct that Camp 4—that is, Monowitz Camp—had its own railroad connection, but one can only say that the Farben plant had a railroad connection?

A. I never said that a track connection to Camp Monowitz existed. I only said that the track leading past the camp, was used to bring transports of prisoners up to the camp.

Q. Well then, Witness, I must put to you what is contained in your own affidavit. I quote a sentence from No. 2, where you say, and I quote, "Farben had a direct railway connection to Monowitz".

Must not any uniformed reader assume that you meant that a rail-road connection existed into Camp Monowitz, as it is shown on the map here?

A I never maintained, even in the place which you have quoted, Doctor, that the track led into Camp Monowitz, but merely up to the point where, on the one side, lay the former village of Monowitz, and, on the other side, the concentration camp Monowitz.

Q In the same paragraph you say something about a transport of Hungarian Jews, who were driven through the Farben plant, as you say. Did you see that yourself, and can you tell me what route these Hungarian Jews took? Where did they come from?

A These Hungarian Jews came from the main camp Auschwitz, and they went along I Street, up to the camp. From I Street to the gate of the camp, the path goes along the camp fence. I could only observe this transport as it came past the camp fence, and I observed that these people were driven cruelly, so much so that one man of them fell down dead in front of the camp. For a certain reason I have remembered this especially clearly, because this dead man was in the morgue for several days. The decomposition was very extensive; the body was swollen more and more every day, and at the end it was about seven centimeters high. That is, the man was lying on his back,

Q Witness, I don't think it is necessary to describe all the details.

Where were you when you observed that? In the camp?

A I was in the camp.

Q Then you only observed a small part of the route taken by the prisoners?

A I observed the part of the route which I have just described, and I learned the other details from the prisoners when they arrived.

Q This I Street is identical with the road mentioned by me previously, the road from Auschwitz to the East, is that correct?

A. The part of the road which we include in the plant terrain—
I don't know whether the street was called I Street before or after-
wards.

Q. Who drove these Hungarian prisoners? The SS, probably?

A. Yes.

Q. In your affidavit you state something about the over-crowd-
ing of the barracks, and you say that two prisoners had to sleep in
one bed. But you yourself, if I remember correctly, slept in the hos-
pital.

A. Yes.

Q. May I conclude from that that you testified to this only from
hearsay, that you did not see it yourself?

A. That is not correct. As a nurse in the hospital I had offi-
cial business at various blocks: louse control, making out tickets
for reporting to the doctor when prisoners were called to the hospi-
tal, and so on, so that I observed these things personally.

Q. Do you know anything about the number of barracks that were
ready at various times in Camp 4?

A. Yes.

Q. How many barracks were ready when, in October 1942 or No-
vember 1942, you arrived as one of the first in the camp?

A. To my knowledge, about five or six barracks were finished
at that time.

Q. And how many inmates were there? Three to four hundred,
is that correct?

A. There were 300 of us from Buchenwald, and about 150 or 200
others, at the beginning.

Q. One can say, then, that there can be no talk of over-crowd-
ing at that time, is that correct?

A. This condition of the first few days was only temporary.
There were no orderly conditions yet, as they were called; the elec-
tric connections were still under construction, so that the situation

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Q. One can say, then, that there can be no talk of over-crowding at that time, is that correct?

A. This condition of the first few days was only temporary. There were no orderly conditions yet, as they were called; the electric connections were still under construction, so that the situation

at the time was not characteristic.

Q. Is it correct that at the end, in 1944, 60 barracks had been completed? Or don't you know that?

A. As far as I know, there were 56 barracks in Monowitz at the end.

Q. Is it correct that the preparation and distribution of food for the inmates in Camp 4 was an affair of the SS and the inmates themselves?

A. I know only that the prisoners' kitchen was supervised by an employee of L. G. Farben, a Mr. Wurzinger. The immediate supervision of the prisoners working in the kitchen was in the hands of the SS men.

Q. You speak further of the fact that prisoners ran into the electrically charged barbed wire. How many cases of this type did you see yourself, and not only hear about?

A. In Monowitz I remember four cases very well, which happened quite near the hospital.

Q. You say that during the time that you were there the water was undrinkable. Do you know that the water pipes for Camp 4 were connected to exactly the same sources as were the water pipes to the plant and other barracks and houses?

A. I am not exactly acquainted with the system of water pipes, but I know that the water which came out of the taps in the prisoners' camp was harmful to health.

THE PRESIDENT: The Tribunal will, at this time, rise for its afternoon recess.

(A recess was taken)

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The PROSECUTOR: The Tribunal will, at this time, rise for its afternoon recess.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

LUDWIG HESS - Resumed

CROSS EXAMINATION - Continued

BY DR. SEIDL:

Q. Witness, you say further that in the winter up to one hundred people died of exhaustion in one day. I ask you did you see that yourself in the plant site or did you hear that or how did you learn that?

A. The dead of the camp were all brought to the hospital so that I could see when there were dead people.

Q. And you want to say that up to one hundred dead on one day occurred?

A. Yes, up to a hundred.

Q. And you say that the inmates were hit frequently by the SS, the capes, and the foremen. Did you see yourself, that prisoners were hit by the foremen in the area of the plant?

A. I did not see it as far as I know; I did not myself observe prisoners being beaten in the area of the plant after the time when I was there myself.

Q. You heard that then?

A. As long as I was in the hospital I only heard it.

Q. You say furthermore that from 1942 to 1945 a turnover of inmates of three hundred per cent occurred. That means three times as many arrived as were there. Do you know that according to a statement of a witness who was examined before you ten thousand prisoners were sent from Camp IV to other labor camps and other concentration camps?

A. I do not know the testimony of the witness before me.

Q. You do not know either that actually approximately ten thousand inmates were sent from Camp IV to other labor camps and concentration camps?

A. When I say that there were about three times as many prisoners went through the camp, I mean to say that these prisoners who worked for I. G. Farben on the plant area.

Q. How do you know that, Witness, that it was three times so many? Do you have any written notes about this or were you told that?

A. I have no written notes, but I know it because I know the numbers. When the prisoners came to the camp they got a certain number and I saw that they had disappeared after a while and so I reconstructed.

Q. But this calculation is no longer correct if for instance it were to be true, as the witness Herzog testified, that ten thousand prisoners alone were transferred to other camps --

MR. SPEECHER: I object to this question.

THE PRESIDENT: That is probably assuming facts. Objection sustained to that question.

Q. Is it correct that disciplinary power in the camp lay solely in the hands of the SS and that especially it was only possible for the SS to announce any punishments and to execute these punishments?

A. I know that the execution of punishment was in the hands of the SS but punishments were not only inflicted because of denouncement by the SS.

Q. You say that also foremen of Farben had turned in reports.

A. Yes.

Q. Did you see yourself such written reports?

A. I did not see any such reports but I know from prisoners coming into the camp in the evening who said "Today that foreman reported me." After a certain time some punishment was inflicted.

Q. Witness, do you know that in the plant site of Farben two hundred and fifty construction firms were working who were working only on behalf of Farben and that they had their own foremen? I ask, how do you know this was a foreman of Farben and not a foreman of some other firm?

A. I do not know the number of firms that were employed there, but I do know of prisoners who worked for Farben -- for example, Detail 26 -- and I know that they were punished because they were reported by the foremen.

Q. I must come back once more to the matter in connection with the transport of Hungarian Jews. You said that these Jews were marched along I Street by the SS. Is it correct that from 1942 on this I Street no longer was within the territory of Farben but that it was a public road which was public property and was used as a general traffic route from Auschwitz to the east.

A. I am not acquainted with the legal conditions affecting the roads, but the road went along past the terrain of I. G. so that in fact it formed a unit with the terrain.

Q. But it is a fact that it was a road within the public domain, a traffic road on which an active traffic moved about?

A. There was considerable traffic.

Q. Is it also correct that this road was elevated a little and that one could very easily see Camp IV from the road?

A. Yes.

Q. Witness, is it furthermore correct that from the beginning of 1943 on the SS no longer entered the plant site but that after the so-called plant fence had been completed the SS was used only outside of this fence and that within the Farben plant the prisoners could move about comparatively at liberty?

A. As far as I know, there was a chain of guards around the places where the prisoners were working.

J
Q. This chain of guards was outside the fence of the plant; is that correct?

A. I don't know exactly where this chain of guards was. I did not visit all parts of the terrain.

Q. You speak furthermore about an order according to which prisoners had to carry out all work on the double. Did you, yourself, see such an order?

A. In the beginning, in the period of construction of the camp, all work was done on the double. I did not see any such order but the fact that the same measure was carried out everywhere left no doubt that there must have been an order.

Q. Witness, how do you imagine that an electrical power plant can be built on the double?

THE PRESIDENT: Counsel, let's not get into the field of attitudes and imaginations because the Tribunal is interested only in facts and it would not be helpful to us.

DR. SEIDL: I have no further questions to the witness.

DR. DRISCHEL: Dr. Drischel for Ambros.

BY DR. DRISCHEL:

Q. Witness, at the beginning of your affidavit you stated that having served this sentence of five years you were transferred to a concentration camp. Can you tell me and the Tribunal why, after you had served your sentence, you were again sent to a concentration camp?

A. Because I was a Jew.

Q. Is that the only reason?

A. I know of no other reason.

Q. What was the charge made against you in the penal proceedings Preparation for Treason?

A. Preparation for Treason was in the Third Reich any statement, any activity directed against the National Socialist regime.

Q. To the question of the defense counsel Dr. Seidl whether you belonged to a party, you answered in the negative.

A. That is right.

Q. Didn't you belong to a party up to a short while ago?

A. Until about six months ago I did belong to a party.

Q. What party?

A. The Communist Party.

DR. DEISCHER: I have no further questions.

DR. GATHER: Dr. Gather for Ambros.

BY MR. GATHER:

Q. Witness, I should like merely to ask you a question in regard to Point 2 of your affidavit and refresh your recollection with a map of the plant Auschwitz as it actually existed when the camp was dissolved.

DR. GATHER: I ask that this map be accepted as Exhibit Ambros No. 9.

THE PRESIDENT: For identification only or do you desire to introduce it?

DR. GATHER: Only for identification, Mr. President, for the moment.

(Document handed to witness.)

BY MR. GATHER:

Q. Witness, please direct your attention to that point on the chart which represents the surroundings of Camp IV. Under cross examination you spoke of the fact that there was a direct railroad connection to Bonowitz. Witness, is it correctly portrayed on this map that there was a railroad connection which lead past the camp on the north side on the other side of the fence of Camp IV, but within the fence of the plant site?

A. Yes.

Q. Is it correct that this railroad tract takes its course from the freight station in the east?

A. Yes.

Q. And is it correct that this track branches off into the

various roads of the plant site Streets E, G, H, P, and so on?

A. Whether these branches are reproduced correctly I cannot judge.

Q. Witness, you said that this tract connection lead through the former village of Lonowitz. Is it correct, Mr. Witness, that even when the camp was dissolved, the school, the large building, and various houses in Lonowitz, were immediately to the north of the camp within the plant site and are so represented on the map and that they still existed at that time?

A. From the camp one could see buildings. I do not know the purpose of these buildings. Right in front there were small peasants' houses.

Q. Farmhouses; that is right. Can you confirm for us that through the entrance to the plant under No. 10 of this map there was an entrance and that farmers' vehicles came into these houses?

A. I don't see No. 10.

Q. That is immediately northwest of the camp where there is a road drawn on the map. Did you observe that farmers' vehicles came on this road?

A. Whether farmers' vehicles went into this gate I could hardly see from the camp.

Q. Witness, when you say that you don't know what houses were concerned, how can you say that this was a former village of Lonowitz?

A. The Poles who were in the camp called these houses the Village of Lonowitz.

Q. Oh, thank you. May I once more direct your attention to the map behind you, Mr. Witness? From your own observation would you not say that the division into fields on this plant does not represent the true facts if you compare it with this other map and your own recollection?

MR. HINSKOFF: If it please the Court, this kind of a question is completely improper as to a comparison of the two camps. There is no evidence that the other map is correct.

THE PRESIDENT: There is no evidence that either of the maps is correct. The objection is overruled. It would throw some light on whether or not the map that the Tribunal sees up there now on the wall is or is not correct. It is rather awkwardly put but it might throw some light on that subject. The objection is overruled.

BY MR. GARDNER:

Q. Witness, would you please look once more at the map before you, that is, exhibit No. 9? According to your recollection is it correct that south of the plant fence the property was not improved in contrast to the land north of the fence or was that not visible from the camp?

A. I don't know what you mean by "not improved." From the camp we could see a building or bunker. It was near the camp.

Q. May I ask you whether this was a completed pill-box or bunker?

A. No; it was begun while I was in the camp.

THE PRESIDENT: Counsel, it appears to the Tribunal that you are going into a great deal of detail about matters that don't appear to be very important, so far as the consideration of this case is concerned, about the nature of the improvements or the location of the former village. We would just suggest to you that we are consuming a lot of time on matters that don't appear to be very important as we presently view the situation.

MR. GARDNER: Yes, Mr. President, I believe that these details may be important at a later time. I connect them with the statement of the witness that this I Street, in his observation, was a public road or was not a public road.

BY MR. GARDNER:

Q. Mr. Witness, is this I Street, according to the plan in front of you, and according to the facts, a street which was unobspicuous in the road map as it is depicted behind you, was it the only large road?

MR. MINSKOFF: May it please the Court, there is nothing in the witness' affidavit which mentions anything about what kind of a road it was. His testimony so far has been that vehicles did go through that road. To the question as to what kind of road it was he said he couldn't have any way of knowing. All details of what kind of a road seem to be going much farther than necessary.

DR. GATHER: Mr. President, may I say something in this regard? The witness said,

"I remember a transport of Hungarian Jews who while they were being driven through the Farben site", and so on, and the witness said that in his own observation it was a transport which marched along the I-Street. If this I-Street was a public road which stands out from the plant site and from the other field, and if it is a public road, then this expression must be incorrect, to say the least.

THE PRESIDENT: Well, that is just a very small circumstance to take so much time about. If you wish to get to the ultimate fact as to whether or-not this is or is not or was or was not a public road, and this witness knows anything about it, please ask it directly and let us move on to something a little more significant.

The objection is sustained.

BY DR. GATHER:

Q. Mr. Witness, you explained that this track north of the plant fence was determined and was used to make transports of inmates possible.

A. The transports of prisoners were taken to the camp on this track several times.

Q. Witness, did you see these unloadings on this track yourself?

A. I observed them myself, yes.

Q. Do you maintain this if I put to you that on this track no unloadings ever could have taken place?

THE PRESIDENT: That is just argumentative. It is pure and simple. The witness has said that he saw it, and manifestly it doesn't seem necessary to ask him if it was not impossible. It is argumentative with the witness. He has said positively what he considers the fact to be.

The objection is sustained.

BY DR. GATHER:

Q. Witness, did you observe at the occasion of these unloadings whether the transports were made up of civilians or were they people already in prisoner's clothing?

A. I remember two transports. One of them was of prisoners in security custody. They received the numbers 113,000 to 114,000. These prisoners came from the concentration camp Gusen. I remember another transport of Berlin Jews who arrived in civilian clothes.

Q. May I ask you when that could have been?

A. This transport received the numbers 104 to 105,000. That was at the beginning of the year 1943.

Q. 1943? Thank you.

DR. GATHER: I have no further questions.

DR. DRISCHER: Mr. President, may I point out that it would not be admissible as a matter of procedure that witnesses of the Prosecution are now in the spectator's gallery who are to be examined during the next few days. If such witnesses are present, I should like to ask the Tribunal to make a ruling accordingly.

THE PRESIDENT: The President seems to recall making an observation once before that so far as the Tribunal is concerned, we don't care whether these witnesses

remain out of the courtroom or whether they come in. However, I think we indicated that where objection to their presence in the courtroom was made to the Tribunal, we would ask that they be kept out of the courtroom until after they had testified, after they are excused. If any of the witnesses are in the courtroom, is it the desire of the Counsel addressing the Court that they be excluded until after they have testified?

DR. DRISCHEL: Yes.

THE PRESIDENT: Then it will be so ordered, and we will ask the guards to see that the witnesses do not come into the courtroom until after they have testified; and we shall ask the Prosecution also to cooperate since they know who these witnesses are.

DR. DRISCHEL: Thank you, Mr. President.

MR. MINSKOFF: May we state that up to the present time, as far as we know, only those who have already testified have come into the court.

MR. SPRECHER: May I ask Dr. Drischel if he has any specific people in mind so we can do something about it? May I ask Dr. Drischel if he had somebody specifically in mind, if he knows, or if he merely had this from hearsay?

DR. DRISCHEL: I cannot give you any particular names for I do not know your witnesses, Mr. Sprecher.

MR. SPRECHER: I just wondered if there was any basis for the statement.

THE PRESIDENT: There is nothing before the Tribunal. Move on. Call your next witness.

MR. MINSKOFF: May it please the Court, we have the same problem again.

Mr. Storn now who has been objected to because of lack of time to read the affidavit. He is ready to testify

now if the Defense is ready to hear him.

THE PRESIDENT: You have no rebuttal?

MR. MINSKOFF: No rebuttal.

THE PRESIDENT: Then this witness is excused. Is the witness Stern the only witness you now have available?

MR. MINSKOFF: He is now ready for this afternoon, your Honor.

THE PRESIDENT: The Tribunal thinks that since Counsel for the Defense has had the affidavit of this witness for so long that we can ill-afford to lose the time to permit you to familiarize yourself with the affidavit further. The Tribunal has indicated it does desire to have you advised as promptly and fully as possible with respect to these matters, but in this instance in the interest of time the Tribunal will permit the Prosecution to call the witness. Perhaps you can divide the responsibility among Counsel and get along as best you can this time, and we will try to avoid that as much as possible in the future.

The Marshal may bring in the witness.

DR. THEOBALD: Dr. Theobald for Dr. Buergin.

Your Honors, in the meantime may I present another matter to you? I didn't have an opportunity recently to object to the Exhibit 1397 which is NI-4326 because the document was presented at the end of a session and I had to pay attention to other documents at that time.

THE PRESIDENT: Pardon me, Counsel. Just a moment, please. The witness may be seated temporarily.

State your objection.

DR. THEOBALD: It is a document which is typed from the beginning to the end and is supposed to be the draft of a letter or a teletype message or a copy of such a letter from a Kommandant Pister from Amtsgroup D in Oranienburg.

It doesn't contain any signature nor any written confirmation. At the bottom of the letter one can only see "SS-Hauptsturmfuehrer", but it does not give the name of that person and is left blank. The confirmation of the document shows that it is a captured document and that the original is with the War Crimes Group in Augsburg. I cannot determine whether this alleged teletype message was ever actually sent out, whether it reached its destination and what effect it took or caused. Therefore, I should like to object and state that the document is unclear to me and seems of no probative value to me.

THE PRESIDENT: What does the Prosecution say?

Could I ask if you have the exhibit number, Counsel?
I didn't hear it.

Perhaps you had better restate it for the record to make sure we have it all right.

MR. SPEICHER: It is Exhibit 1397. Your Honor, this is not dissimilar from any copy of a telegram which you would look upon. Most copies of telegrams are not signed by anybody, and this is a copy of the telegram which is a captured document. It bears no special initials or anything else except that there is the typing on there, as Defense Counsel indicated, "Fister".

THE PRESIDENT: Does the Secretary have the original exhibit available? The objection of Counsel for the Defense goes more to the question of whether or not the document has any probative value, and if it does have, as to what weight should be attached to it rather than its admissibility. The record affirmatively discloses that it is a captured document. In that respect it is authenticated to the extent that would make it admissible here if it is pertinent. We have pointed out before the Prosecution is not required to show everything

about a document at the time it is offered. If it develops that the exhibit has no probative value, it will be disregarded. If it is admitted and no connection with the defendants is shown, they will not be harmed by it.

The objection is overruled.

What is the nationality of the witness?

MR. HINSKOFF: Czechoslovakian, Your Honor.

JAN STERN, a witness was examined and testified as follows:

THE PRESIDENT: Mr. Witness, will you please remain standing for the purpose of being sworn. Raise your right hand, say "I" and state your name.

THE WITNESS: I, Jan Stern.....

THE PRESIDENT: And now repeat after me:

"I swear a pure oath that as to all questions asked here before this Tribunal I shall answer only the truth, nothing but the truth and that knowingly I shall withhold nothing."

(The witness repeated the oath.)

THE PRESIDENT: The witness may be seated.

THE WITNESS: I should like to be permitted to make a statement.

THE PRESIDENT: Very well. State what you wish to say to the Tribunal.

THE WITNESS: I had the intention to make my statements in my mother tongue which is Czech. In order to facilitate matters for the Court, I am ready to testify in German.

THE PRESIDENT: Your explanation is on the record of the Tribunal, and we may say to you that it will indeed facilitate matters if you can and will speak in German because of our limited translation facilities here. We shall

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take it as a favor to the Tribunal if you are able to do that.

MR. MINSKOFF: May it please the Court, the Prosecution offers in evidence at this time Document NI-4828 as its Exhibit 1470. The affidavit appears on page 125 of the English, in Book 75, and 143 of the German.

THE PRESIDENT: Counsel may proceed.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q. What is your full name, Mr. Stern?

A. Jan Stern.

Q. And where do you reside?

A. In Hodonin, Czechoslovakia.

Q. With respect to your affidavit, Prosecution Exhibit 1470, are there any corrections or additions you wish to make at this time?

A. None.

MR. MINSKOFF: The Defense may cross-examine.

THE PRESIDENT: The Defense may cross-examine.

CROSS EXAMINATION

BY DR. SEIDL (Counsel for the defendant Dr. Duerrfeld):

Q. Witness, you have the inmate number 68,699, is that right?

A. I shall look it up...yes, that is correct.

Q. On the first of September 1939 you were arrested for political reasons--

A. Yes.

Q. As you state in your affidavit, May I ask you what the nature of these political reasons was?

A. I am a Czech, and, as you know, Counsel, the National Socialist regime fought against the Czechs--and I am a Jew on top of that, so they fought me on two counts. Therefore, it was my duty to work as much as possible to prevent the National Socialists from destroying us completely.

A. I am a Czech, and I believe that not every Czech has to be in a party. I am a good Czech--

Q. Excuse me, witness, I have no doubt whatever that you are a good Czech. You should merely have answered yes or no to my question.

A. Do I have to answer that, please?

THE PRESIDENT: Mr. Witness, the Tribunal will answer your question. It is not necessary that you answer every question with yes or no. In most cases you can do so, and where you can do so it will be very helpful if you will answer yes or no. But, above all, it is very important that you answer briefly and directly and that you do not feel called upon to volunteer any information.

You will be examined fully, and if your answers are deemed incomplete, Counsel is at liberty to ask you another question. You will help us all very much in the expedition of this long trial if you will bear that in mind and be as brief and direct as possible.

Counsel may proceed.

Q. Witness, answer the question I asked.

A. I never belonged to a party and I do not belong to any party today.

Q. Now, when did you come to Auschwitz?

A. That was at the end of 1942--I believe in October.

Q. And when did you come to Camp IV?

A. I was the thirteenth prisoner, Counsel; I was in the first file.

Q. You say in No. 2 of your affidavit, Witness, that before the fall of 1942 there had been a camp in Monowitz?

A. Yes.

Q. How do you know that?

A. When we came to Auschwitz we, of course, met comrades whom we knew from before, and when we were told that we were

going to Monowitz we were told that the camp had already existed there that had been liquidated by typhoid epidemics, and that those people had been working for Farben.

Q. Now, Witness, I must put to you that according to all the evidence, including the evidence of the Prosecution, it is fairly clear that before October 1942 there not a single prisoner was billeted on the terrain of I.G. Farben, that those prisoners were used there for work but that they came from Auschwitz daily--

MR. MINSKOFF: --

THE PRESIDENT: Now, that objection will be sustained without being stated. That is argumentative and a statement of counsel. Counsel should ask questions and not testify. Ask another question.

Wait a moment, Mr. Witness; there is no question. The Court has ruled the question out. Wait for another question.
DR. DR. SEYDL:

Q. Witness, how long were you at the I.G. plant, yourself? How long did you work there, before, as you say in the affidavit, you became senior block inmate?

A. I was in the camp for one month; then I became supervisor of the room; then I became the senior of the block, and then I stayed in the camp for one year.

Q. And didn't you work in the plant yourself?

A. Of course.

Q. I wanted to know how long you worked there.

A. How do you mean: before I became senior of the block? or after.

Q. Before.

A. About one month...I already told you.

Q. And what work did you do during that time?

A. We constructed barracks. In order to get those barracks, we had to go back to the camp very often, we had

to carry trucks--

THE PRESIDENT: Mr. Witness, just a moment, please. Just now said "We constructed barracks." you answered the question. Just wait for the next one.

Q. You say that two to four prisoners slept in a bed, how many barracks were finished when you arrived in October 1944?

A. Three to four.

Q. And how many prisoners were you?

A. The first inmates who marched in may have been 800 to 1000.

Q. Well, when I must put to you that just a little while ago there was a prisoner here who testified that there were four or five hundred--

THE PRESIDENT: Wait a minute, that is not a question, that is a statement of counsel's. Ask him something. Go ahead, ask a question.

MR. SMIDL: I wanted to put to him that another witness has testified something else and that there is a discrepancy here.

THE PRESIDENT: That may well be. That happens very frequently at a trial.

That is not a question at all; that is a statement to him. Go ahead; interrogate the witness.

Q. How much did you get to eat in camp IV per day?

WITNESS: At the beginning we got a bread ration which consisted sometimes of an eighth of a portion--or sometimes of a quarter of a portion--but sometimes, and very frequently, only one-sixteenth of a loaf of bread, "Kommissbrot."

Q. And who was responsible for the food for the prisoners of Camp IV? That is to say, who prepared the food and who distributed it?

A. As far as I know, as senior of the block, Farben delivered goods and food into the camp and paid for each inmate. I know no more about this point.

Q. But it was prepared by the SS? or by the prisoners themselves?

A. You don't believe, Counsel, that Farben employed civilians as cooks for us prisoners?

Q. Witness, it is not important what I think. All I want you to do is to answer the question.

A. Of course the food was prepared by prisoners.

Q. Under the supervision of the SS, in Camp IV?

A. I was not in the kitchen; I had other functions.

Q. During all these two years that you were in Camp IV, you never went into the kitchen?

A. No.

Q. Is it not true that every prisoner got twenty-five grams of margarine daily?

A. Not daily, but it happened almost every day that a so-called butter or margarine ration was distributed--but not every day.

Q. Now, what were your duties as a senior inmate of the block?

A. I had to see to it that when my comrades returned from work I was to make it possible for them to lighten their burden, some-what. I had to pick up the food. Once every two weeks I had to get fresh linen. I had to get shoes--if possible. And I had to see to it that the barracks were kept in order.

Q. Witness, you said before that you never went to the kitchen. Now, I must ask you where did you get the food?

A. That was put out for us in front of the kitchen. Then we were called and I, together with a few other comrades from other barracks, carried the food from that place to our

barracks.

Q. Is it true that in order to increase the industry of the prisoners that so-called premiums were given out?

A. Yes, that is correct.

Q. Is it true that with these premium tickets the prisoners could get tobacco, food, etc., from the canteen of the camp?

A. No, that is not correct. May I answer this?

THE PRESIDENT: Just a moment. You have answered the question. He asked you if it was true--and you said it was not correct. Now, if he wants to know more about it, counsel will ask you.

Q. You have also testified that Dr. Duerrfeld inspected your block?

A. Yes.

Q. Now, you were the senior inmate of this block?

A. Yes.

Q. Now, what impression did he get of this block, as far as cleanliness is concerned, and so forth? Please describe to the Court the impression which a visitor would get who came to such a block where the prisoners were quartered.

A. Doctor, don't you think it might be better if you asked Dr. Duerrfeld?

Q. No, witness, I want to ask you because you are on the stand at the moment and I am interested in your opinion, and the Court wants to hear what you have to say about it.

THE PRESIDENT: Witness, just describe the condition and answer the question directly, as you saw it.

DR. SEILD: I asked the witness what impression a visitor would have.

THE PRESIDENT: Counsel, the Tribunal was trying to help you out of a rather bad question. Technically, you are

calling for a state of mind or a mental impression. If
you want to know whether or not the conditions were such
as to convey an impression--why not just ask him to describe
the conditions, and then the Tribunal will know what sort
of an impression it would convey to anyone. If you insist
on this question we will sustain the objection and you ask
another one.

Q. Witness, if visitors came to your block, and you were in charge of the block, did he see that the block was clean, that the prisoners were well-housed or what did he see?

A. The prisoners were not well housed, doctor. I have to be very brief, and therefore I have to let this explanation suffice.

Q. Then you also said that the hospital was overcrowded?

A. Yes.

Q. Were you in the hospital frequently?

A. Every day, doctor. It was my duty to turn my sick comrades over into the hospital so that my book tallied.

Q. Is it true that this hospital had no less than 700 beds?

A. I only know that we needed a hospital 200 times as large in order to take care of those seriously sick prisoners.

THE PRESIDENT: Mr. Witness, please, the Tribunal is trying to help you along. You were asked a simple question, if it was true that the hospital had 700 beds, and you could answer that directly instead of saying how many beds were needed.

Please answer the question and tell this Tribunal whether or not it is true that the hospital did have 700 beds, - if you know. If you don't you can say you do not even know.

THE WITNESS: I do not know.

BY DR. SEIDL:

Q. You also said, witness, that the German foremen made reports on the prisoners when the prisoners did not work well?

A. That is correct.

Q. Did you yourself ever see such a report, or do you know that only from hearsay?

A. Unfortunately, I saw very many of those reports and had to write them myself.

Q. Where did you see these reports?

A. In the carpentry shop. Dr. Derrfeld visited us a few times. He will certainly remember me.

Q. Well, to whom did these reports go, witness?

A. I had to write this report, once even in the presence of Dr. Duerrfeld.

THE PRESIDENT: I am sorry to have to interrupt you so often but if you will please just keep the question in mind; the question was, to whom were these reports sent. Can't you please answer that, if you know?

THE WITNESS: I don't know that.

DR. SEIDL:

Q. From your previous answer I gathered that you worked in the carpenter shop?

A. Yes, of course.

Q. How long were you there?

A. A little more than a year.

Q. What kind of work did you do there?

A. The first work was so-called auxiliary work. We had to carry wood and later I worked my way up to the office.

Q. Were you a capo at this time?

A. No, I was never a capo.

Q. Well, how does it happen that you allegedly had to write such reports; normally at least, that is how I understood your testimony so far, - the reports are written out either by the foreman or by the capo.

A. I told you, counsel, that I was later working in the office.

Q. Now you said that there was a special department where it was possible for the employees and the foreman to buy food and clothing?

A. Yes.

Q. How do you know that; did someone tell you that or did you observe this yourself?

A. A few foremen approached me who requested me that I might pick out the quality of a few pieces of clothing that they might get. When I asked them what clothing they were talking about, they told me something in strictest confidence. I know the names of these foremen, and I could

give them to you if you desire. I had to pick out for these foremen, one suit of clothes each, one coat each, and some other articles of clothing.

Q. That is enough, witness.

A. Please.

Q. Under No. 14 you talked about air raids. Can you tell me, witness, how many prisoners, altogether, were killed in air raids on the I. G. Auschwitz?

A. I am not informed about that.

DR. SEIDL: No further questions.

THE PRESIDENT: Any further cross-examination.

CROSS EXAMINATION

BY DR. DIX, attorney for the defendant Schneider:

Q. You said, witness; that before your arrest you were active against National Socialism, at least that is how I understood you. I should like to know, very briefly, what kind of activity that was concretely, without political considerations?

MR. SPRECHER: Mr. President, if I am not mistaken, this inquiry that goes into the reasons why these particular people were subject to confinement, and brutality by the Nazis, is beyond the scope of anything in his affidavit or anything which we should go into in this proceedings, and I might say that if we were to follow a procedure like that, in my opinion, with respect to such collateral matters, then indeed we could expect to be here for a very, very long time.

THE PRESIDENT: Mr. Prosecutor I am wondering - just a moment please, if I understand counsel. He asked what his activities were. I may be wrong about that, and I am wondering if you so understand the question.

DR. DIX: I did not in any way intend to offend the witness. I merely wanted to know what kind of activities he exercised. I cannot imagine why he should not wish to answer the question.

THE PRESIDENT: Within reason the Tribunal will allow such an inquiry. The objection will be overruled.

Did you understand the question?

THE WITNESS: Yes sir.

THE PRESIDENT: You may answer it.

A. Doctor, the Germans, - and when I say Germans I mean the National Socialists, and the Gestapo and so on, with us in Czechoslovakia -
BY DR. DIX:

Q. Just a moment. Let me interrupt you. You could tell me briefly what activity you exercised. Did you bring intelligence reports? Did you help people cross the border?

A. No, I cannot answer your questions in that way. I was not active politically, I told you. I defended myself against the National Socialists. Can't you understand that, doctor?

Q. But you must have done something?

A. They wanted to destroy me and I wanted to defend myself; that's all.

Q. Yes, I believe that they wanted to destroy you, but I don't see how you defended yourself.

A. Doctor may I tell you a very small instance? There were 30 members of our family alive; now there are only two alive. If I had not defended myself I would not be here either.

Q. Now I understand you; yes.

A. Thank you, very much.

Q. Then as you say, you were senior inmate of the block, and in your affidavit you indicated that you were present at the selections?

A. That was my duty.

Q. What happened when these people were selected, first of all in the block?

A. Those people who were not able to work and had not enough strength to march were drawn up on the parade ground.

Q. What did you do?

A. I had to collect the cards of those people who had remained in the camp. I had to get them from the barracks and wait until the SS

asked for these cards.

Q. And you did this for about one year?

A. Yes.

Q. Then about your work in the carpenter shop; you wrote out reports you said first in the carpenter shop and then in the office?

A. Yes, that is the same thing; the one was outside and the other was in the office.

Q. I understand you correctly, you worked in the office of the carpenter shop and you wrote reports there on those who were to be punished?

A. For those people reported by the foreman.

DR. DIX: Thank you. No further questions.

THE PRESIDENT: We will suspend the further cross-examination of the witness for the day, and take advantage of the next two or three minutes to afford the Prosecution an opportunity to tell us what witnesses will be called tomorrow, if you can, Mr. Prosecutor.

MR. MINSKOFF: The list of names we read earlier this afternoon will obtain, Your Honors, tomorrow.

THE PRESIDENT: Very well.

Are there any other announcements the Prosecution wishes to make with respect to the presentation of its evidence now?

MR. MINSKOFF: If it please the Court, if it so happens that these four witnesses who remain are through with both direct and cross-examination before the day is over, we will continue with the Document Book 75.

THE PRESIDENT: Thank you.

The Tribunal will now rise until nine-thirty tomorrow morning.

(In recess until 0930 hours Thursday, November 13, 1947).

Official Transcript of American Military Tribunal VI
in the Matter of the United States of America against
Carl Krauch, et al, defendants, sitting at Nuernberg,
Germany, on 13 November 1947, 0930-1630, The Honorable
Curtis G. Shaks, presiding.

THE MARSHAL: The Honorable, the Judges of Military
Tribunal VI. Military Tribunal VI is now in session. God
save the United States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, are the defendants present?

THE MARSHAL: May it please Your Honor, all the
defendants are present in court.

THE PRESIDENT: Gentlemen, the President regrets to
disappoint you with reference to Saturday's session. There
are some administrative problems that make it impracticable
to hold a session of this Tribunal on the next coming
Saturday. There will be no court on Saturday. However,
since we have had a short week, the Tribunal feels very
definitely that we should have court on next Monday, under
the circumstances, and we establish no precedent or policy
in that respect; but, there will be no session of the
Tribunal on Saturday, and we expect to be in session on
Monday. I give you that so you can make your plans
accordingly.

Counsel may proceed with the examination of the witness.

JAN STERN (Resumed)
CROSS EXAMINATION (Continued)

BY DR. GATHER:

Q. Witness, in the second paragraph of No. 4 of your
affidavit, you mention and you laud the foreman Otto Koehler.
Am I correct if I assume that you got to know this person
yourself there?

A. Yes.

Q May I ask you what detail you were working on ?

A My working detail was No. 23.

Q No. 23. Witness, did you learn later that this foreman Otto Kochler was sent to a concentration camp by the SS because he favored certain inmates?

A I do not know that, and until I was arrested that was not true -- that was until January 1945. I do not know what happened later.

Q Did you know the foreman Soliger?

A Yes, from the carpentry shop.

Q Do you know that this foreman Soliger was sent to a concentration camp by the SS because he favored certain inmates?

A He also was at liberty until January 1945.

Q Then you do not know that it was only with difficulty that he was gotten out from the concentration camp by the Farben management?

A I do not know that.

DR. GATHER: Thank you very much. I have no further questions.

THE PRESIDENT: Any further questions on cross examination?

(No response)

Any redirect examination of the witness?

MR. HINSKOFF: No, Your Honor.

THE PRESIDENT: The witness is excused, and the Marshal will escort him from the box.

(Witness excused)

Call your next witness.

MR. HINSKOFF: Mr. Coward is the next witness.

THE PRESIDENT: Bring in the witness Coward, please.

What is the nationality of the witness, please?

MR. MINSKOFF: British.

(CHARLES JOSEPH COWARD, a witness, took the stand and testified as follows:)

THE PRESIDENT: Mr. Witness, will you remain standing for the purpose of being sworn?

Raise your right hand, say "I", and state your name.

THE WITNESS: I, Charles Joseph Coward --

THE PRESIDENT: -- do solemnly swear that the testimony I shall give in this cause shall be the truth, the whole truth, and nothing but the truth, so help me God.

(The witness repeated the oath)

You may be seated.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q What is your full name, Mr. Coward?

A Charles Joseph Coward.

Q Where do you reside?

A 133 Chichester Road, Lower Edmonton, London-N-9.

MR. MINSKOFF: The Prosecution wishes at this time to introduce in evidence Document 11696, as Prosecution Exhibit 1471.

May I make a correction?

THE PRESIDENT: Yes.

MR. MINSKOFF: This affidavit is already in evidence as Exhibit 1462. It appears here in Book 75, on page 47 of the English and 70 of the German.

BY MR. MINSKOFF:

Q Mr. Coward, with respect to Exhibit 1462, your affidavit, are there any corrections or additions you wish to make?

A Paragraph 1 we read through, and it states my rank was that of Battery Sergeant. I wish to make it clear that

it should read "Battery Sergeant Major".

Q Are there any other corrections or additions, Mr. Coward?

A No, I do not think so.

MR. MINSKOFF: No further questions from the Prosecution.

THE PRESIDENT: The defense may cross-examine.

DR. DRISCHEL: Mr. President, I have only a very few questions.

CROSS EXAMINATION

BY DR. DRISCHEL:

Q Witness, it is remarkable that you state in your affidavit that for a few cigarettes you saw the gas chambers in Auschwitz and the crematoria. Can you tell us where that was in the city of Auschwitz?

A To my best belief the gas chamber and crematorium, as it was known, was about fifty yards from a railway station at the far end of, I think the name was Monowitz.

DR. DRISCHEL: Excuse me, Mr. President, I could not hear the translation.

Q Did I understand you to say that you saw the gas chambers in Monowitz?

A No, not actually in Monowitz, no. Where the station was at Auschwitz, you see -- I very likely misunderstood your question. At Auschwitz there was a railway station, you see, and about fifty to a hundred yards from Auschwitz there was a siding where they used to bring the civilians, you see; and about twenty yards on the other side of this siding was where this particular guard took me and showed me the place.

Witness, could you please indicate that to us on the map that is behind you? I don't understand where these gas chambers are supposed to have been. If you will be kind enough to turn around you will see a map of Auschwitz.

THE PRESIDENT: Just a moment. Witness, please, I have to remind you that you cannot testify away from the microphone, but you may stand up, take your time and look at the map as much as you wish, but before you answer the question please sit down again and talk into the microphone.

THE WITNESS: Very good, sir.

(The witness examined the map)

THE WITNESS: The City of Auschwitz, there (indicating) -- Whereabouts is the station, farther over? You see, the station is not marked on the map, is it?

THE PRESIDENT: Mr. Witness, you will have to do your own testifying; we can't furnish it to you.

THE WITNESS: I see. Over where the railway definition is, the building, I should say, was about twenty yards from there (indicating).

THE PRESIDENT: Perhaps, counsel, you had better direct a specific question that will enable the witness to testify without indicating manually what he is talking about on the map. We can't get that into the record.

DR. DRISCHEL: Yes, I understand.

BY DR. DRISCHEL:

I can define my question by saying that you, Mr. Witness, are of the opinion that these gas chambers and crematoria were located in the vicinity of the station of the city of Auschwitz. That is the way you described it previously. Did I understand you correctly?

A That is correct. 3681

Q Then I merely have to put to you that they certainly were not there, because if they were any place they were in the concentration camp. However, you couldn't know that.

THE PRESIDENT: That may go out; that is a statement and not a question.

BY DR. DRISCHEL:

Q Then may I ask you a question in this way. Were you in the concentration camp of Auschwitz itself?

A On one particular occasion I was in the concentration camp, yes.

Q I mean not in Monowitz, but in Auschwitz.

A Well, Lager VI was about two hundred yards away from the camp which we knew as the concentration camp.

Q If you will turn around once more and look on the map — do you then mean that camp which is about two hundred meters next to Camp VI, which is called Camp IV on that map?

(The witness examined the map)

A The numbers 11 and 12 which are indicated on the map is the camp that I have stated.

Q Very well. Then I understood you correctly that you were never in the main camp of Auschwitz, which is on the lower left-hand side of the map, because you said that you were in the camp which is a few hundred yards next to camp VI.

A That is correct.

Q Then, Mr. Witness, is your description in the affidavit at least not very misleading?

A I do not think so. The figures indicated 11 and 12 was known to us as the concentration Lager, and when I mentioned about the gas chambers or crematoriums, I mean to infer that I had visited what was shown to me to be a gas chamber some distance from the railway station at

Auschwitz.

Q Now I am completely confused. You mean to say that you did not see any gas chambers in Camp IV, Monowitz, but that in the city of Auschwitz, near the railroad station, that is where you saw the gas chambers?

A That is correct.

Q And do you still maintain your description if I put to you that in the city of Auschwitz there certainly were no gas chambers?

A In the city of Auschwitz there were no gas chambers, I agree, but some distance away from the city itself-- the city itself was about two miles from the station.

Q I believe, witness, if I may ask you once more, then even in the vicinity of the railroad station you could not have seen any gas chambers. Perhaps you are mistaken.

MR. MINSKOFF: The Prosecution objects to that line of questioning, if Your Honor please. It is perfectly clear that it is only the names that the witness doesn't know. He has pointed with his finger on the map to these various places all along.

THE PRESIDENT: The objection to the last statement that counsel made is sustained because it was not a question, it was a statement of counsel.

You may ask another question.

BY DR. DRISCHEL:

Q My conclusive question in this regard is this. Were you ever in the main camp of Auschwitz, which is at the lower left-handed corner on the map?

A No, sir.

Q Thank you. One more illustrative question. You said that you went to town every day and that the people

in the town, the SS man, the concentration camp inmates, and the foreign laborers, told you that thousands of people were being gassed in Auschwitz. May I ask you this, witness? You went into the town as an AWOL, without leave? Isn't that right?

A I was privileged to visit lots of commandos, and at Auschwitz I could always travel to Auschwitz for the purpose, whenever it was possible, to buy a few razor blades or boot polish. All I had to do was report to the guard room at Lager VI or Lager VIII, as the case may be, and a guard would be allotted to me.

Q Do you speak Polish?

A A little, sir, a few words or phrases like Ponismajo Polski, and so weiter.

DR. BRISCHEL: Thank you. I have no further questions.

THE PRESIDENT: Is there further cross-examination of this witness?

BY DR. HOFFMANN:

Q Witness, I merely wanted to ask you this. Do you consider it possible that the guard in question, who told you that these were the gas chambers, might have lied to you?

A I don't think so. I mean, everybody I came into contact with knew what was going on. He had no need to lie to me. I mean, he would gain nothing by lying.

Q But perhaps he wanted to earn cigarettes, in an easy way.

A Well, in those particular times, I mean, we did not have to give the Germans cigarettes every time. They were actually fed up with the whole business. You see, they wanted -- well, it came to a time when they spoke the truth.

There was no doubt about it, I mean, whatsoever.

Q Do you speak German, Mr. Witness?

A Yes, I have a fair knowledge, not a great deal. I have been home two years, and I have forgotten a lot, but I can still get by with the amount of German I do know.

Q One more question. How were you treated generally?

A Well, for myself, I should say as a prisoners of war, very fair. I had no complaints actually at Auschwitz in the manner in which I was treated.

Q Do you believe that the plant management in Auschwitz also gave your other comrades the same treatment, as far as they were English prisoners of war?

A There were some cases of illtreatment to British prisoners of war, but in my case, no, because as I was a trusted man, and assigned by the British Red Cross to my job, they sort of acknowledged that, you see, and would not dare to insult me very much because they knew I had the power to complain to Geneva.

Q You also had this power to complain for your other comrades, didn't you?

A Oh, yes.

Q And therefore one would have to assume that in any case of unjust treatment of your other comrades the same would have happened?

A Will you repeat that please?

Q I mean, witness, that one must assume that if you learned that your comrades were treated badly, you would have reported that to Geneva, and that for that reason alone one was careful in the treatment of your comrades?

A Yes, I am not complaining. You must understand, I am not complaining about the treatment accorded to the

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British ranks.

DR. HOFFMANN: Thank you. I have no further questions.

MR. DIX for Schneider:

Q I have only two short questions. Did you ever have any visits of the Protective Power or of Red Cross Representatives in Auschwitz?

A Yes. Twice we had members of the Swiss Delegation visit Lager VIII, also Lager VI.

Q When was that, approximately?

A The last occasion was round about, I should say - I do not wish you to pin me down to the exact time - I should say around about June.

Q When these delegates of the Swiss Commission arrived, were the general conditions in Auschwitz that you have described discussed with them?

A Well, although we spoke with the Swiss Delegation - I spoke on quite a few matters regarding inmates - but the German officers that were there, they could also understand English and would try to push me away from it.

Q What prisoners are you now speaking of? You said "prisoners". There are quite a few.

A When I say prisoners, I mean the British ranks.

Q You could not speak about the other conditions?

A Oh, yes, I tried to get it as best as I could about how it would eventually - not knowing when the war would end, of course - how it would eventually affect the morale of the British ranks - the treatment accorded to the inmates.

Q And what did the Swiss Delegation do or say as a result - in your presence?

A They took one or two notes, but it seemed to me as if they were actually, I am sorry to say it, actually helpless to alter any conditions whatsoever in Auschwitz.

Q I have no further questions.

THE PRESIDENT: Any further cross-examination?

MR. TRABANT for Dr. Duerrfeld:

Q Mr. Coward, you said that at one time you were in Camp No. IV,

that you stole your way in, is that right?

A That is correct, sir.

Q That you procured prisoner's clothing through cigarettes, and thus you could get in? Is that right?

A No, I did not procure the clothing in that way, sir. I made arrangements with one of the inmates to change clothing with him, because I had a reason for doing so.

Q The prisoners had their heads shaved. By reason of your hair cut did you not become conspicuous?

A It so happened, sir, that whilst I was in Auschwitz my hair was very, very short for health reasons, and I should imagine that it would be rather hard to distinguish between me and the inmates.

Q Yes, but you probably looked healthier and had a better appearance than the inmates. Wouldn't you be recognized because of that?

A Well, I don't think so, though I must say I was perhaps a million per cent more healthy than inmates. I don't think they were looking to see whether a man was healthy as he went from work.

Q Well, you didn't go to work but you came from work, and you were probably checked when you came into the camp. Didn't they notice you by reason of your different appearance?

A I don't think so. As I stated, they were not looking for healthy men to march into the camp. Also, I had the assistance of about three other inmates who sort of protected me, inasmuch as I was in about the second rank, you see, and when we were counted - the guard that counted us didn't look at every man to see if he were English, Irish, Scotch, or Welsh. He would have had to be a real magician to see that I was English among those people.

Q Very well. You were in one of the barracks in which the inmates lived. How many beds were there in this barrack? Can you estimate that?

A Yes. I should say in that particular barrack that I walked into, I should say very roughly about 200 to 250 beds. They were three tiers high, and it seemed as if thousands marched into this room, because

when I got into the barrack the man who was acting as a sort of guardian to me led me to the second tier, but although the inmates were not very strong I am afraid I missed the boat there and I had to sit up half the night.

Q We want to understand each other correctly. I don't want to know how many places there were where one could sleep, I am asking you for the bed stands, how many bed stands were in this barrack?

A I am sorry. I should say roughly about 200 or 250.

Q Very well. Did you see any other pieces of furniture in these barracks? Were there many places to sit, stools or chairs?

A No. There were no stools or chairs to sit on, but there were in this particular barrack this particular night - I am telling you what I saw - that there were three tables. Of course, I never took notice, but as there was insufficient bed space, I mean a bed could have been put where this particular table was, it struck me at the time very funny.

Q Thank you, that is enough.

THE PRESIDENT: Any further questioning, Gentlemen?
It not so appearing, is there any re-direct examination?

RE-DIRECT EXAMINATION

BY MR. WINSKOFF:

Q Just one question, your Honors. With respect to the British prisoners of war, did you personally ever make complaints to the management of I.G. Farben?

A Oh, yes, Sir. I had contact with Dr. Duerrfeld and his, shall we say, undermanagers. And very often Dr. Duerrfeld once visited Lager VI with a group of officers, and on this particular occasion - I don't know the ranks of these particular officers, but I sort of imagine they were of very high order, because they tried their utmost to keep us British prisoners away from them - I managed to go to the canteen and force my way in by bluff and complain to the whole people that was there.

Q What was the nature of the complaints you made?

A On this particular occasion it was regarding bedding, blankets. They had issued us with some blankets in Lager VI that were made out of, I suppose you say were such that if you happened to move in bed at night you tore it. Even if you would shake the blanket the blanket would fall to pieces and the guards or the supervisory officer there, German officer, they made a particular visit to the rooms to see that everything was all right; he would complain about the wanton, as he called it, destruction of the blankets.

Q That is all. Thank you.

THE PRESIDENT: Anything further?

RE-CROSS EXAMINATION

MR. SEIDL for Dr. Duerrfeld:

Q Witness, in what camp were you, in No. VIII or No. VI?

A In both Lagers, Lager VIII and Lager VI.

Q Is it correct that both Lager VIII and Lager VI were guarded by the German Wehrmacht and that the entire administration of these camps were in the hands of the German troops?

A Not the administration, sir, only for discipline. The administration came from Dr. Duerrfeld. The orders that were sent to us were in German and in English and signed by Dr. Duerrfeld. So, therefore, Dr. Duerrfeld was the man that we naturally took to be the boss of the show.

Q Witness, what did these orders refer to that you mentioned just now? What were the contents of these orders? Did you see these orders yourself?

A Oh, yes, I had them in my office. I had a sort of office where I placed all the orders that came through, even if they were in German, so that every British rank in the camp could see them. One order I can recollect was an alteration in the time of the British prisoners of war proceeding to work. It had been altered from half past six to half past five in the morning.

Q Witness, but you personally and the other prisoners of war could

be given orders only by the German officers who had power of command over the prisoners of war? Is that right?

A Oh, no sir. If any German civilian - I beg your pardon, when I say any German civilian I mean any civilian that was a member of I. G. Farben - could walk in our camp and give orders. I mean he was authorized - he had a pass to show that he was one of the people that was in charge of us.

Q Can you remember the rank of the German officer who was the commander of the prisoner-of-war camp? Was that a captain, a major, or what?

A A lieutenant, sir.

Q Do you remember his name?

A I am sorry.

Q I have no further questions.

THE PRESIDENT: Anything further, Gentlemen?

Mr. Witness, you are excused, and the Marshal will escort you from the witness stand.

Will the Prosecution call its next witness.

MR. MINSKOFF: Mr. Dales will be the next witness.

THE PRESIDENT: Bring in the witness. What is his nationality?

MR. MINSKOFF: British. We should like to announce at this time that the following witness will be called tomorrow: Professor Waits (W-a-i-t-s), Mr. Feinberg, Mr. Davison, Mr. Hill, and Mr. Ferris.

THE PRESIDENT: Bring in the witness, Mr. Marshal.

THE PRESIDENT: The witness will remain standing for the purpose of being sworn. Raise your right hand. Do you solemnly swear that the testimony you give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God? You may answer, "I do."

THE WITNESS: I do.

THE PRESIDENT: Be seated. The witness is with the Prosecution.

MR. MINSKOFF: The Prosecution offers at this time Document 11695 as Prosecution Exhibit 1471. It appears in Book 75, at page 103 of the English and 119 of the German.

THE PRESIDENT: The document will be received in evidence. Prosecution may proceed to examine the witness.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q. What is your full name, Mr. Dales?

A. Leonard Dales.

Q. Where do you reside?

A. 28 Lindsey Street, Prodingham, Lancashire, England.

Q. With respect to your affidavit, Prosecution Exhibit 1471, are there any corrections or additions you wish to make?

A. None whatever.

MR. MINSKOFF: That is all for the Prosecution, your Honor.

THE PRESIDENT: The Defense may cross examine the witness.

CROSS EXAMINATION

BY DR. TRABANT (Counsel for the defendant Dr. Duerrfeld):

Q. Mr. Dales, in your affidavit you say that from August 1943 on you worked for Farben, is that correct?

A. That is correct.

Q. Was not the first time that British prisoners were in September 1943? Perhaps you are mistaken in your dates.

A. Will you repeat that, please?

Q. Was the first time that British prisoners of war were used

in the Farben plant in Auschwitz not the end of September 1943? Perhaps you are mistaken in your dates.

A. I went with the first party of British prisoners to Auschwitz.

Q. And the exact date you do not know any more?

A. I wouldn't be sure about the exact date. Dates didn't matter to me then.

Q. Thank you. You worked in the Farben plant in Auschwitz until January 1945, is that correct?

A. That is correct.

Q. That is approximately one year and three months.

A. That is right.

Q. What is your profession, Mr. Dales?

A. I am a steel worker.

Q. If you were with the German pipe layers, was that your own profession or was that an Allied profession?

A. That was not my own profession.

Q. Did you work alone with this German pipe layers or were you with a group?

A. There were several other displaced persons -- a Frenchman, two or three Englishmen too.

Q. And did they always work together in one group, or were they distributed over the plant, these people from the pipe laying detail?

A. They were distributed over the entire plant.

Q. Mr. Dales, do you know what piece work is? Did you participate in work that was piece work?

A. I don't quite understand you.

Q. It was handled in this way in the Farben plant in the case of British prisoners of war, that they were told in the morning, "When you have finished this piece of work then you can go home," Was that the case with you?

A. No, not all the time, Only on occasions. Certain occasions. Very infrequent.

Q. And in the case of your other comrades, do you know whether that happened rarely or frequently, this type of work?

A. Infrequently.

Q. Were you in one or two camps? Were you in Camp VI or in Camp VIII?

A. I was in Lager VIII and Lager VI.

Q. How am I to understand that, Mr. Dalas?

A. You asked me if I was in two camps. I first off went into Lager VIII the first time I went to Auschwitz. The next move was to Lager VI, which was near the plant, near I. G. Farben works.

Q. Were all British prisoners of war moved into Camp VI?

A. All of us were moved.

Q. Well, who was the camp commander in this No. VI Camp?

A. The British camp commander?

Q. No, the German.

A. Well, we had two or three. I wouldn't be sure. Meiser, a man called Meiser, was there at Lager VI.

Q. Can you only remember this one name?

A. That is the only name I can remember. I could remember the other faces.

Q. Do you know what military rank this Meiser held?

A. I think he was Oberfeldwebel.

Q. Now and then you certainly expressed wishes in your camp. Did you express these wishes to the camp commander or did you express them to Mr. Coward, who passed them on to the camp commander? Or how was it when you had any wishes or requests in your camp?

A. Mr. Coward. Our requests were always put forth to Mr. Coward, who then went forward to see the camp commander.

Q. The German camp commander?

A. Presumably so.

Q. And were those wishes complied with?

A. No.

Q. Never?

A. Sometimes. Very infrequently.

Q. Were you in the camp when it was visited by delegates of the Geneva Red Cross?

A. Yes.

Q. Did all British prisoners of war have an opportunity to speak to these people?

A. No, definitely not.

Q. Why do you say "definitely not," Mr. Dales?

A. Because each time a man approached the Swiss delegate, the Swiss delegate was either hushed (?) or a German would stand in front of him so he could not put his case to him.

Q. Mr. Conrad was able to speak to those persons, wasn't he?

A. Yes. He was in a different position to ours.

Q. Do you know whether the representatives of the Geneva Red Cross were satisfied with conditions in the camp?

A. I wouldn't know that.

Q. Under No. 4 of your affidavit, Mr. Dales, you say that you arrived in the plant at six thirty and that the inmates were already there at that time, is that correct?

A. I believe I said some of the inmates were already there.

Q. You said "some." Yesterday or the day before, one of these concentration camp inmates was here and told us that in summer the work began at seven and in the winter it began at eight o'clock for the inmates. Is that correct, or was he mistaken?

A. I think he must have been mistaken.

Q. When did your work begin?

A. About six thirty.

Q. Was that during the entire time of your stay there?

A. Yes, more or less. More or less.

Q. Thank you. You state furthermore under No. 4 of your affidavit,

"Once these inmates were assigned to the different Meisters, they became the slaves of each respective foreman." What do you mean by that expression?

A. You mean by being the slaves of their respective Meisters? I mean they had to obey each little command, every minute order to the last letter; otherwise they were threatened with death.

Q. How am I to understand that they were threatened with death?

A. They were told that if they didn't work to his satisfaction he would report them to the SS, who would consequently see that they got gassed.

Q. Do you speak German, Mr. Dales?

A. A little.

Q. And did you hear yourself that these people were told, "If you don't do everything the way we order it, then you will be threatened with death"?

A. Then, not "then you will be threatened with death," "then you will be gassed."

Q. Did you hear that yourself?

A. Yes.

Q. Did you hear that from many foremen?

A. Oh, yes, several.

Q. Then you heard it frequently?

A. Quite frequently.

Q. In your work as pipe layers, you got around in the entire plant, you said. Did you then frequently work in the vicinity of such prisoner details?

A. Oh, yes, yes, every day.

Q. Every day you were in the vicinity of prisoner details?

A. Yes.

Q. Mr. Dales, you are testifying under oath. You know that.

A. I am testifying under oath.

Q. That is what you mean by "slaves"?

A. What do you mean by that question? Could you repeat it? What do I mean by "slaves"?

Q. I mean, what you have just now described, this way of speaking to these inmates and treating them, that was what you meant when you said that the inmates were slaves to their foremen.

A. Precisely.

Q. Further, under No. 5 of your affidavit, you say that some of the prisoners were working in coats in the winter time, whereas only a few of these prisoners clothed in coats or most of them, and those without coats were the exception.

A. I didn't see many clothed in coats. In any case, the coats were of such inadequate quality they wouldn't keep out cold.

Q. Were they also striped coats, like the suits that these people wore, those pajamas as you called them?

A. Yes.

Q. Did you see any other type of coats during the last winter, which only had a piece of striped cloth superimposed on the back?

A. Yes, towards -- just nicely before we left. Just nicely before we left Auschwitz. Only possibly two or three weeks before.

Q Did you see any wind breakers, any lined waist coats that the prisoners wore in the winter time over their striped clothing?

A No.

Q These were vests which had a broad line of oil paint on the back to distinguish the inmates. Didn't you see any pieces of clothing of that nature?

A Are you referring still to the gray coats, the overcoats?

Q I am referring to these vests, the waist coats, not to the coats. They were waist coats, which were so comfortable that they might possibly be looked upon as coats.

A Listen... in English dress there is trousers, vest coats and jackets. The inmates had jackets and trousers.

Q And, of course, winter coats, as you say.

A If you like to call them winter coats.

Q You say that the inmates wore wooden shoes. Were the entire shoes made of wood, or only the soles and heels?

A The soles and heels.

Q And the other parts of the shoes were leather or cloth?

A Well - I mean they weren't leather. Definitely not leather. There was some material. Possibly cloth.

Q Then you go on to say that a Polish Jew told you about selections - but that is hearsay and we can leave that... At the end you say, "Everybody who was in Auschwitz or came there for a visit had to know about the gassings." Did you ever speak with any visitor about this who came to Auschwitz?

A What do you mean by visitor? I saw many people who came to Auschwitz and left. Displaced persons, etc.

Q I mean the same that you understand by "visitor"... when you say that everyone who visited the factory would know that the people were being gassed.

A Well, it didn't take us long to find out... we were there only about two days when we found out.

Q I asked you whether you talked with such a visitor about these gassings?

A Not to any German visitor.

DR. TRAMANT: Thank you. I have no further questions, Mr. President.

CROSS EXAMINATION

BY DR. NOETHAUM (for defendant Von der Heyde):

Q Witness, I have one more question. Did you hear only of cases of foremen and other German workmen who threatened, or did you also hear of foremen who conformed themselves in a humane way, and who facilitated life for the inmates?

A I never heard of any. I never saw any.

THE PRESIDENT: Any further cross examination? And re-direct examination?

MR. WINSKOFF: No, your Honor.

THE PRESIDENT: The witness is excused, and the Marshal will escort him from the box. And now the next?

MR. WINSKOFF: Mr. Volheim.

THE PRESIDENT: Is this, Prosecutor, also a British witness?

MR. WINSKOFF: No, a German witness.

THE PRESIDENT: Bring in the witness.

MR. WINSKOFF: If your Honor please, I understand the witness has not arrived. We will go on with the documents to save time.

THE PRESIDENT: Very well. What books do we need?

MR. WINSKOFF: We are on Book 75, your Honor.

THE PRESIDENT: Very well.

MR. WINSKOFF: The next several documents, please the Court, are affidavits dealing with the condition of inmates. The Prosecution offers in evidence at this time their Documents NI-11708, as Prosecution Exhibit 1466.

THE PRESIDENT: Just a moment, please. Oh, this is the lost number. There is one I omitted, 1466.

MR. LINSKOFF: 1466.

THE PRESIDENT: Very well.

MR. LINSKOFF: And NI-11702, as Prosecution Exhibit 1467... pardon me... oh, I see, that's where we jumped in place.

THE PRESIDENT: That should be 1472.

MR. LINSKOFF: 1472. Then it goes along - 73, and so on. Thank you, NI-11701, as Prosecution Exhibit 1473; and NI-10824 as Prosecution Exhibit 1474; NI-11699 as Prosecution Exhibit 1475; NI-9807 as Prosecution Exhibit 1476.

THE PRESIDENT: Just a moment, please. What about the preceding document in your index?

MR. LINSKOFF: There is 11695... it is now in evidence, your Honor.

THE PRESIDENT: 11695.

MR. LINSKOFF: 11695, it is the affidavit of Mr. Dales, the previous witness.

THE PRESIDENT: What number is that?

MR. LINSKOFF: That is 1471.

THE PRESIDENT: Thank you.

MR. LINSKOFF: Those are the documents, your Honor please, which have been without any document number.

I understand the witness has now arrived. And we will go on with the witness.

THE PRESIDENT: What is the name of the witness?

MR. LINSKOFF: Norbert Vollheim.

THE PRESIDENT: The Marshal will bring in the witness, please.

NORBERT VOLLEIM, a witness, took the stand and testified as follows:

THE PRESIDENT: Mr. Witness, you will please remain standing for the purpose of being sworn. Raise your right hand, say "I," and state your name.

THE WITNESS: I, Norbert Vollheim...

THE PRESIDENT: And now repeat after me: swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath)

THE PRESIDENT: The witness may be seated.

DIRECT EXAMINATION

BY MR. INSKOFF:

Q Mr. Tollheim, what is your full name?

A Herbert Tollheim.

Q Where do you reside?

A In Luebeck.

Q With respect to your affidavit which is now in evidence as Exhibit 1476, are there any corrections or additions you wish to make at this time?

A I have to state that under number 4 it reads that I had a connection with the Schwerin Oberlandespräsident in leader of the political department of Lönowitz, the present Unikower. Unikower was the first clerk of the inmates in the political department, and not the leader of the political department. That could only have been an SS man.

Q Are there any further corrections or additions?

A No.

MR. INSKOFF: Very well. The prosecution has no further questions.

THE PRESIDENT: The defense may cross-examine the witness.

CROSS EXAMINATION

BY MR. SLIDE (for defendant Dr. Duerrfeld):

Q Witness, when did you go to the Camp 4 with the Farben plant in Auschwitz? Can you give me the date?

A I arrived in Auschwitz on the 11th of March 1943.

Q How many inmates were there already in camp 4 when you arrived?

A About 200 inmates.

Q In your affidavit you state that when you arrived you were received by the SS, the senior inmate, and a few block eldest. Is it true that the senior inmates and the block eldest were themselves inmates?

A Yes, that is correct.

Q You had certain functions in the administration of the inmates, didn't you?

A Yes, by order of the SS.

Q Of course, by order of the SS. How many barracks were there at the time in Camp 4 when in March of 1943 you arrived there, that had been completed, and in which inmates lived?

A About 20 barracks.

Q You say that the barracks were over-crowded, Witness. Can you remember how many inmates, approximately, were housed in one of these barracks?

A The normal number was about 130 to 140. When I arrived, and later, up to 240 and 250, and sometimes more, were stuffed into these barracks.

Q Other witnesses have testified that the normal capacity was 165. If I put to you now that if this figure is multiplied by 20, one arrives at the number 3,200, would not the barracks space have sufficed?

A That is clear. The barracks also included administration, clothing and kitchen barracks.

Q How many barracks would you have to subtract for this purpose?

A At least six to eight.

Q Did you yourself work in the plant site of Farben, Witness?

A Yes.

Q May I ask you for what length of time?

A With an interruption of about three months - during my entire stay in Auschwitz.

Q You were in Auschwitz, until ...

A Until 18 January 1945, when Auschwitz was evacuated.

Q For what firms did you work in the plant site?

A Only with Farben.

Q You misunderstood my question, witness. I wanted to ask in what construction sites in this plant you worked. In the carpentry shop, in the bookkeeping department, cement carrying or where?

A I was, first of all, used - just as all new arrivals were used - for the transporting of iron and cement, which was called the murder detail, Detail 4. Later I was used as a welder in Hall 797 - that is, the subsidiary building of the department for high-pressure synthesis. There I worked as a welder up to the end, with a short interruption of three months, when I worked in the camp itself as a welder.

Q How long did you work in the cement detail, Witness?

A About three months.

Q How long approximately was the route that the inmates had to traverse when they carried the cement bags?

A That depended on where the trains stopped and where the cement was to be taken. Generally, one can say the distance was about 300 to 500 meters, in my estimation.

Q You spoke of trains just now, Witness. Might it be correct if I tell you that on the plant site itself there were 100 kilometers of railroad tracks?

A I cannot say that, since we inmates were not permitted to wander freely about the plant site - and therefore I could never estimate the number of kilometers.

Q But you saw yourself that very large transports were done by mechanical means and not only by inmates?

A No, I perceived that more work had to be done by hand than by mechanical means, at least at the beginning.

Q You worked as a welder, then?

A Yes.

Q Were there many inmates occupied as welders or in similar occupations in the Farben plant?

A In the beginning, none at all. In the beginning everybody who was physically able was used for the most difficult and heaviest physical labor. Later they tried to pick out the skilled workers. There were not very many welders. At least, welders who were inmates.

Q You probably are not a welder by profession, either?

A I learned welding in 1938 in a special course.

Q At any rate, the welder's job was much easier and more pleasant than many other types of work, especially carrying cement?

A No, in certain respects it was more difficult. We did not have any protection, and especially it was difficult because the German foremen gave us the most dangerous types of work, and especially without any safety devices, belts, etc.

Q Witness, you just now mentioned the German Farben foremen. Don't

you know that Farben as such is a chemical firm, and that the construction of the plant itself was of course not carried out by Farben, but by 200 to 250 construction firms?

A But the patron saint of all those firms was Farben, and I myself was employed by a firm which was immediately subordinate to Farben.

Q When you say that the person who gave this assignment was Farben - then you are right. But if I put to you that there were many foremen who did not belong to Farben, but to all those other construction firms, then you will have to admit that?

A I had nothing to do with them. I was only occupied at work in Farben enterprises.

Q But you certainly must have noticed that other firms were working there?

A Yes, of course.

Q Under No. 2 in your affidavit you state that you only noticed, when you arrived that you were in the Concentration Camp Auschwitz. May I assume that you meant that you were in Labor Camp IV, Monowitz, which, of course, belonged to the Concentration Camp Auschwitz? Is that correct?

A I learned that only when I was in the camp itself.

Q You say further on that German Farben foremen forced the Kapos to give the order to the inmates to take off their coats. Could the Farben foremen give orders of this nature to the Kapos, or isn't it true that such orders could only be given to the Kapos by the SS?

A No, it occurred repeatedly that the foremen themselves gave directives to the Kapos, by reason of the strong position they had in which were construed as orders by the Kapos, and which these Kapos could not evade, since otherwise the foremen would of course have reported the Kapos to the SS.

Q While you were working as a welder in the Farben plant, were you outdoors or indoors, or did that vary?

A I was in a semi-closed hall, summer and winter, which was made

a little hospitable by us so that we could work there. These Farben foremen didn't worry about that on the contrary, any comfort we created for ourselves was not welcomed by them.

Q In those semi-closed halls, were there only inmates, or were there German workers or free foreign laborers?

A There were German workers, foreign laborers, and partly, also, British prisoners of war working there.

Q Then practically they were all the laborers who were working in the plant of Farben mixed up there.

A Yes, that was because I was doing specialized work which not every inmate could do.

Q Then the conditions for the German workers, as far as working place is concerned, were the same?

A I beg your pardon the German workers did not work regularly in the same spot in which I worked. They only were there temporarily, especially to supervise us. The German foremen had their own breakfast and dining rooms. They had their own clothing rooms, and they could stay in their rooms for hours to warm themselves in the winter time, which we could not do.

Q How long were the working hours, Witness? When did you arrive at your working place, and when did you leave there?

A The working hours varied. In the summer they were longer than in the winter. In the summer we began around seven o'clock, and we finished our work between five-thirty and six o'clock.

Q And how about the winter time?

A In the winter, as soon as darkness permitted us to march out from the camp, and in the evening as soon as darkness permitted us to march in.

Q Were your working hours longer than those of the German and other workers, or was there any difference, or not? Isn't it true that in the winter time the prisoners left their place of work sooner and began later than the other workers?

A No. Our working hours were partly longer - and especially the inmates were forced to work on Saturdays and Sundays, which was, of course, not the case regularly for the German and civilian workers.

Q Witness, is it not true that very many inmates worked voluntarily on Sundays in the plant because they would rather stay there than in Camp IV, where they were supervised by the SS?

A That depended. It didn't make any difference where you were beaten, and where you were hungry, whether in the plant, or in the camp.

Q When you were working in the plant as a welder, where were the SS men who guarded you? Were they in the plant, or were they stationed around the fence of the plant?

A The chain of guards was around the plant. The control itself was carried out in the camp by uniformed guards and also by guards who were in civilian clothes. The supervisors of Farben unquestionably reported matters to the SS in this case.

Q Witness, you say "unquestionably". Is that an assumption on your part, or did you make positive observations?

A Unfortunately, my observations were very positive.

Q In what respect?

A If a Farben supervisor was not satisfied with the tempo of the work, he reported that to the SS command and that meant severe punishment for the individual inmate or for the detail. I experienced that myself, not in my detail, but in other details.

Q If you experienced that in other details, then you must have been told about it. Isn't that right?

A No, I saw it myself.

Q What did you see? I cannot possibly imagine what you saw.

A I saw how a neighboring detail was checked. The result of this check was not satisfactory to the supervising Farben agent. He reported that to the SS command post. Then SS Hauptscharfuhrer Rackers had this detail called out in the evening and he punished the Kapo and foreman.

THE PRESIDENT: Just a moment. It is time for our morning recess.
The Tribunal will rise at this time.

THE MARSHAL: There will be a fifteen-minute recess.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal wishes to say that we were not establishing any practice of extending our morning recess; we had some matters in chambers of which counsel or representatives of counsel on both sides know about that took a little more time today.

MR. SPRECHER: Mr. President, after talking with Dr. Dix, for the defendant Schneider, we have made arrangements to call Walther Stothfang (S-t-o-t-h-f-a-n-g) as a witness this afternoon. The exhibit in question is Exhibit 1310. That is NI-5670, found in Document Book 67, page 150 of the English; Document Book 57, page 277 in the German.

THE PRESIDENT: Proceed with the examination of the witness, please.

CROSS EXAMINATION (Continued)

NORBERT WOLLHEIM - Resumed

BY DR. SEIDL (Counsel for the defendant Duerrfeld):

Q Witness, before the recess you mentioned that in the I.G. plant itself controllers of the I.G. went about and made reports. We are interested in getting to know these names, and I should be grateful to you if you could name some of these controllers.

A Unfortunately I am not in a position to do that because the controllers, just as rarely as the SS, did not introduce themselves to us by name.

Q You then said that foremen of the I.G., and probably foremen belonging to other firms, had issued directives to the Kapos, etc. Can you give me the name of any of these foremen who made themselves conspicuous in that connection?

A The foremen with whom I had dealings within my

sphere of work was Obermeister Mueller, from Block 779, Synthesis High Pressure, and the man who was subordinated to him, called Dietrich.

Q And both of them were foremen of the I.G.?

A Yes, this was the synthetic high-pressure plant directly subordinated to the I.G.

Q In which way did these foremen maltreat the inmates? Did you see anything in that connection?

A I said that they repeatedly asked the Capos and the foremen to speed the work; and, furthermore, whenever in winter we lit a stove and whenever they were witnesses to such a procedure, they made reprimands to the Capo -- which meant that energetic steps were taken against us.

Q But you did not yourself see these foremen beat any inmates?

A I saw that foreman Dietrich repeatedly beat inmates and whenever my work led me into other departments I found that there German foremen belonging to the I.G. were beating inmates. When I was not yet a welder I was repeatedly kicked on my buttocks by a German foreman, when unloading cement. I also saw that other inmates, comrades of mine, were treated in the same way.

Q Witness, do you know or have you ever heard of the fact that from the plant management there was a strict prohibition, valid for all I.G. employees and all other employees, against beating anyone, irrespective of whether the person was an inmate or any other worker?

A I cannot remember any such directive, but if any such directive had existed it was never adhered to.

Q You furthermore said that the inmates wanted to warm themselves on the stoves. Is it true that in the plant

hundreds of such stoves were erected during the winter, and that inmates could be seen frequently warming themselves at these stoves?

A Now and again little stoves were erected by the inmates themselves, but inmates could only warm themselves whenever no I.G. controller, German foreman, or SS functionary were present.

Q In another passage of your affidavit you say that the inmates were strictly prohibited from taking up any contacts with the British prisoners of war. Am I correct in saying that the inmates were not only prohibited from talking to English prisoners of war, but that they were not allowed to speak to anyone at all? They were not, for instance, allowed to speak with German workers or any other foreign workers?

A Naturally, there was such a prohibition in existence, but it was not kept, in the same way as many other directives which were issued by the I.G. management or the SS.

Q Witness, do you mean to say that this prohibition was issued by the I.G. management? Would you not agree with me that we are here concerned with a prohibition which obviously emanated from the SS?

A I don't know who issued that decree, and it is really of no importance as far as its practical execution is concerned. I know that this prohibition regarding British prisoners of war was not kept by many people, as, for instance, myself, and that intentionally.

Q In your affidavit you go on mentioning the foremen of the Mannesmann Werke at Berlin, whom you saw treating inmates well. Is it not true that there were many foremen, foremen belonging to the I.G. and also of many other firms,

who assisted the inmates in many ways?

A Cum grano salis. It must be said that most of the foremen of the I.G. were very much opposed against the Jews and the inmates. I only mentioned the exceptional behavior of the Mannesmann Werke people because the foremen who worked there mostly came from Berlin, and since I myself was born in Berlin it was quite easy for me to establish contact with them, and I discovered that they were sympathetically inclined towards me. Probably they did not go through this investigation procedure which the I.G. Farben used for all its employees.

Q Is it not true that also other firms from Berlin were active in the I.G. plant?

A I did not maintain any contact with them.

Q I only mention the Siemens-Schuckert Werke, A.M.G. for example, and other big plants.

A I did not maintain any contact with them at all.

Q But you know that such firms were there?

A I know that also other firms were working in the plant area.

Q Then you corrected your remarks about Unikowa and you said that we were not concerned with the head of the political department there. You wanted to say that he was active in the office of the political department?

A Yes.

Q Was he the head of the office there?

A He was the first inmate clerk in the political department. He actually had nothing to do with the office itself.

Q Do you know how many clerks were active in the political department? I am referring to inmates.

A I only know of three who worked there at the time Auschwitz was evacuated.

Q Can one conclude from that that inmates were active in very important positions, and that it is entirely incorrect to say that inmates were only used for hard labor?

A Even work as a clerk in the political department consisted of hard labor. It was a conspirative work, and the men working there often risked their lives whenever they tried to see to it that inmates were saved from the SS to whom these inmates had been reported. I myself am acquainted with many cases where such clerks saved the lives of my comrades, and that cannot be regarded as an easy task at all.

Q Do you know that for a long time the entire wage office in the I.G. itself had clerks which were inmates of Camp IV?

A Personally, I do not know anything about that since I had no contact with the wage office.

Q At the end of your affidavit you mention that Dr. Guerrfold himself issued directives to German foremen to drive the inmates to the greatest possible work out-put. You referred in that connection to two directives.

Did you see these directives yourself? Or were you only told about them.

A Since I, myself, was not a German foreman, I could not see these directives. I stated in my affidavit that this report regarding the directives came to me from a reliable source, and I had confirmation regarding that matter from what German foremen themselves told me and from what others told me and because of the practice which I saw myself in the year 1944.

DR. SKIDL: I have no further questions to the witness.

THE PRESIDENT: Is there to be any further cross examination of this witness?

BY DR. HOFFMANN:

Q Witness, in your affidavit you say that inmates were beaten by I.G. foremen and by the Kapos until they either started work again or remained lying, dead, on the floor. You said, "I, myself, saw such cases." So far, no witness has testified here as having seen an I.G. foreman beat an inmate to death.

Are you in your testimony only referring to Kapos? Or do you actually mean to say that you saw --

MR. MINSKOFF: May it please the Court, objection is made by contemplation.

THE PRESIDENT: That question is not improper. The objection is overruled.

BY DR. HOFFMANN:

Q I am asking you, Witness, did you see an I.G. foreman beating an inmate to death? Where did you see him do that, and will you please describe it? Or is the formulation of your sentence not quite correct; perhaps you only wanted to refer to the Kapos?

A No, I saw personally -- it was during the first week after our arrival at Auschwitz -- that Kapos as well as I.G. foremen were beating inmates. I remember exactly that at Camp IV such a case occurred where an I.G. Farben foreman, together with a Kapo, were beating an inmate -- I think it was a Jew from Holland -- until he was dead. We, ourselves, when marching to the roll call, brought this dead inmate into the camp of Monowitz.

Q Do you still know which foreman that was?

A I must say again that no German foremen nor any

SS-men introduced themselves to us when we came to Auschwitz.

Q Well, how could you recognize that he was an I.G. foreman?

A Because of the fact that he did not wear a uniform, as we did; furthermore, because of the fact that the building where such work was carried out was expressly designated as I.G. buildings.

Q May I put to you that according to my information hundreds of other firms were working on the plant. Therefore, it can be possible that you are speaking of a foreman belonging to another firm. Could one not say that you are right that the Employer was I.G. Farben, but the foreman to whom you refer may not have been an employee of I.G.? Would you say that with certainty?

A I can say it with certainty. In this building where this case occurred there was only the I.G. responsible because I heard by conversation how the Kapo received his work slip, and he then referred to German foreman; and on that work slip I.G. Farben was mentioned, and no other firm.

Q Witness, was this foreman a German?

A Yes.

Q How do you explain that? You are a German and that foreman was a German. How is it possible that a normal human being, as this foreman must have been, could do an act like that? I assumed that he had the benefit of the same education as you or I ...

A Counsel, I don't have to explain to you the psychology of National Socialism. The German foreman was a German. He belonged to the Master Race; he was a National Socialist. I myself was a Jew; therefore I had no civilian status. I was only a number; and I do not want to describe to you now how we were designated there.

Q. But witness, you would agree with me that this National Socialism ideology regarding the Master race was not accepted by all Germans? You just said there were foremen of the Mannesmann-Roehrenworks, who did not act like that at all.

A. Counsel, we are now dealing with the notorious problem of the collective guilt or individual guilt.

Q. Witness, I really do not want to go into that. I only want to say that it cannot be assumed that the I. G. management gave an order to beat inmates to death; that cannot be assumed, can it?

A. Counsel, why did they then use inmates to erect their plants at Auschwitz, and why did they bring us to Auschwitz from all parts of Europe in order to give our blood there for years and years, and lose our relatives?

Q. I have put a very clear question to you. Do you believe there was a directive or a permission by the management of the I. G. permitting foremen to beat inmates to death? Yes or no?

A. Whether such a permission or whether such a directive existed or not makes no difference at all. The fact is that German foremen were beating inmates. They beat everyone, whether they were intellectual or manual laborers; whether they were people coming from Germany, Holland, Russia, Poland, or wherever they came from.

Q. Now in conclusion, do you believe that that was a consequence of the National Socialistic ideology which was inherent in these people?

A. It was not only a consequence of a National Socialistic ideology, but also a consequence of their personal attitude. These persons knew that they could give play to their brutality, that they could play their game of

the Master Race there, and that they were assisted in the from all sides, including the heads of the German state.

Q. Witness, I know that you could not complain to the SS; that is why I do not want to ask you about any right of complaint; but was not the fact that you were under the supervision of the SS of decisive importance for what happened?

A. Counsel, if there had not been thousands of people who became members of the SS, there would not have been any concentration camps, and had there not been thousands of Germans who could be misused by the I. G. Farben for their plant in Auschwitz, then tragedies like that in Monowitz could not have come about.

Q. Another question, witness. Could one see at the very beginning how things were going to develop? Let us take a case of an architect who designed this plant.

A. I do not quite understand your question, Counsel.

Q. With reference to the conditions which you have described, could one understand them when one was actually there at the construction plant?

A. Every person who went through the plant with open eyes, and everyone who had any human feelings within him was in a position to observe these matters, knew to what results this treatment in the I. G. Farben plant did lead.

The defendant Duerrfeld himself could see when he attended our march into the Camp Monowitz on repeated occasions.....this march was not like a parade of well-nourished soldiers, but it was really a parade of mourning.

Q. A final question, witness. What should the plant management have done.....in other words, had they wanted to.....

MR. MINSKOFF: I object to that question, your Honor.....as to what the I. G. should have done.

THE PRESIDENT: That objection is sustained. It is going into the field of speculation. If it becomes pertinent to determine that question, the Tribunal can only determine it from facts that are established in evidence, and will have to draw its own conclusions. It is hardly a subject for the expression of opinion of an expert, or even of a layman.

The objection is sustained.

MR. HOFFMANN: Your Honor, this brings me to the end of my cross-examination.

THE PRESIDENT: Thank you. Is there any further cross-examination of this witness? There being no request, we shall ask the Prosecution if there is any re-direct examination?

MR. MINSKOFF: No, your Honor.

THE PRESIDENT: Then, Mr. Witness, you are excused and the Marshal will escort you from the box. If you have another witness ready, we can perhaps qualify him and swear him before our recess.

MR. MINSKOFF: We haven't one now. We have Mr. Rausch. We can go to documents, if the Court please.

THE PRESIDENT: Perhaps we can get a document or two into evidence.

MR. MINSKOFF: Very well, your Honor.

THE PRESIDENT: Just for the record, we are back on Book 75?

MR. MINSKOFF: Book 75.

THE PRESIDENT: Very well.

MR. MINSKOFF: The following group of documents deal with the punishment of the inmates of Monowitz. I am speaking

of the group of I. G. Farben inmates in the index.

THE PRESIDENT: Go ahead.

MR. MINSKOFF: This should be distinguished from the previous document, in the previous document book, which referred to punishment of foreign workers, as distinct from inmates.

The Prosecution offers at this time NI-11038, as its Exhibit 1477.

JUDGE MORRIS: It is already in.

MR. MINSKOFF: That is the affidavit of the witness who is on today. I am sorry.

NI-12068, as Prosecution's Exhibit 1479.

THE PRESIDENT: 78.

MR. MINSKOFF: They have been switched.

THE PRESIDENT: It is not 1479; 1478 the document should be.

MR. MINSKOFF: I am sorry, your Honor. NI-11014, as Prosecution's Exhibit 1479.

NI-11692, as Prosecution's Exhibit 1480;

NI-11029, as Prosecution's Exhibit 1481;

NI-11002, as Prosecution's Exhibit 1482;

NI-11003 as Prosecution's Exhibit 1483.

THE PRESIDENT: Now if the Prosecution please, so that we are not confused, I call your attention to the fact that on my book, what is page 11.....although it is not numbered.....of the index, I don't have document NI-4829 in evidence. It appears to be the affidavit of Arnest Tauber.

MR. MINSKOFF: Arnest Tauber was the witness that was on yesterday, your Honor.

THE PRESIDENT: The number, if you have it there?

MR. MINSKOFF: It is 1455.

THE PRESIDENT: Thank you. Is that correct; 1455?

MR. MINSKOFF: Yes, your Honor.

THE PRESIDENT: Thank you.

MR. MINSKOFF: With respect to Prosecution's Exhibit 1477, the Court's attention is directed to page 119 of the English, and 137 of the German, where it is indicated on the stationery of I. G. Auschwitz, that "prisoners (numbers mentioned) hid in a dark corner in the power plant. We request punishment."

On page 122 of the English and 141 of the German, the punishment is indicated as, "15 strokes".

The Court's attention is also directed to Exhibit 1478, page 129 of the English and 147 of the German, where it is stated: "I am reporting Jules Messe, French Jewish inmate, for smoking on the open plant side in spite of several warnings", and it is indicated, "punishment: 20 strokes with a club".

The Court's attention is drawn to Exhibit 1480, page 130 of the English and 148 of the German, where it is indicated that: "Majzlik, a Polish Jew, was found in a building sitting and smoking near the fire, together with a detainee and an Englishman". He was reprimanded by Ing. Sander, and punishment 15 cane strokes.

The Court's attention is also drawn to Prosecution's Exhibit 1480, page 139 of the English and 155 of the German, where the affidavit of a prisoner of war states:

"Apart from the work, the Jews received various forms of corporal punishment. I recall one case where one was hit over the head with a pick by a kape. One of the usual punishments was to make the inmates carry bricks wherever they went, for each slight infraction. Sometimes an inmate would carry as many as 5 or 6 bricks. These he would have

to take wherever he went, to eat, to sleep, everywhere. Also, just to amuse themselves, the Germans would ride their bicycles and have inmates trot behind them wherever they went, as dogs."

The Court's attention is drawn to Prosecution's Exhibit 1481, page 141 of the English, 158 of the German, where an inmate is reported because he left his work position and talked for about 10 minutes with an eastern work girl." Punishment is asked for, as indicated; punishment, 15 strokes with a cane.

The Court's attention is drawn to Prosecution's Exhibit 1482, at 147 of the English, 163 of the German, where an inmate is reported because he stole a nearly new cloth jacket.

The punishment is 4 times standing in the standing cell constructed to enforce a standing position of the person concerned.

The Court's attention is drawn to Prosecution's Exhibit 1483, appearing on page 148 of the English and 164 of the German where an inmate is reported because he sat down for more than an hour during working hours, and made himself conspicuous by laziness and poor work. Punishment three times fatigue drill.

May it please the Court, we pass over the next document which was offered for identification before, but this Tribunal has ruled it out as the affiant is no longer alive.

THE PRESIDENT: What document?

MR. MINSKOFF: NI-6190, marked for identification as Prosecution's Exhibit 1459. That refers to Entress.

THE PRESIDENT: We perhaps may recess for lunch at this time, until one-thirty.

(Court in recess until 1:30 o'clock.)

AFTERNOON SESSION

THE MARSHAL: Military Tribunal VI is again in session.

THE PRESIDENT: Call your witness, Mr. Prosecutor.

MR. VAN STREET: May it please your Honor, with the Court's permission I would like to address the Court briefly as to this witness, who is the affiant in the affidavit dated 21 March 1947, being NI-5670, Prosecution Exhibit No. 1310.

THE PRESIDENT: Just wait a moment before you bring this witness.

MR. VAN STREET: The name of this witness is Dr. Walther Stothfang. Dr. Stothfang is a native German, is a citizen of Germany, and now resides in Germany. The affiant is brought here because of his former position as a Ministerial Councillor in the Reich Labor Ministry. It might also be added that he was one of two Secretaries to Fritz Sauckel, the Plenipotentiary for Labor. If your Honor please, his testimony goes principally to the mechanics in handling the requests of industry for labor assignments. Now, may it please the Court, the witness may be called. Dr. Walther Stothfang.

THE PRESIDENT: Bring in the witness.

WALTHER STOTHFANG, a witness, took the stand and testified as follows:

THE PRESIDENT: The witness will please remain standing for the purpose of being sworn, raise his right hand and say "yes" and state his name.

THE WITNESS: I, Walther Stothfang

THE PRESIDENT: Now repeat after me. "Swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing." (The witness

repeated the oath) The witness may be seated.

MR. SPRECHER: Mr. President, I think Dr. Dix, defense counsel for the defendant Schneider, has been detained. I happen to personally know that he is, I believe, the defense counsel who planned on handling the matter. Dr. Seidl has just said he is going to inquire as to what has befallen him. Can't we wait just a moment?

THE PRESIDENT: Yes, surely.

(A short recess was taken awaiting the arrival
of Dr. Dix)

DIRECT EXAMINATION

BY MR. VAN STREET:

Q Dr. Stothfang, will you please state your full name, please?

A Walther Stothfang.

Q And where do you reside?

A I reside in Pilstern, District of Luebbecke, Westphalia.

Q Dr. Stothfang, do you have in your possession an affidavit given by you on 21 March 1947 and which is identified as NI-5670?

A I have this affidavit before me in the German language

Q Dr. Stothfang, was this affidavit given by you under oath and did you state therein the pure truth and nothing but the truth?

A I made this statement on 21 March under oath and stated the pure truth in it.

Q Have you had an opportunity to examine this affidavit carefully recently?

A Yes, I did have that opportunity and the representative of the prosecution submitted to me the affidavit in the German language before the session began

and I read it through at my leisure.

Q Dr. Stothfang, are there any changes or corrections which you care to make at this time?

A The same affidavit which is the subject of the proceedings here was already the subject of cross examination in the Flick Trial in September of this year. At that time I made some additions to A, Arabic 1, and I added this sentence: "According to which the enterprise had to state that the necessary accommodations were present and the food supply was issued and I said that they only referred to camps of foreign laborers but not to camps of prisoners-of-war." That's only an addition of my affidavit. In the English translation of my affidavit I found that under "2" of my affidavit there was an inaccurate English translation of the German text. At the end of No. 2 it should read that the not filled applications of the Labor Office that could not be complied with were turned over to the Landes Labor Office and as stated in the English translation "to the Reich Labor Ministry."

Q By the way, Dr. Stothfang, were you cross examined on this particular affidavit in the Flick case?

A As far as I remember this affidavit was submitted by the Prosecution in the Flick case too and I was cross examined only by the German defense. The cross examination extended over a period of one and a half days, about the entire question of assignment of the foreign laborers in Germany.

Q Now, Dr. Stothfang, do you recall whether or not you made any other changes or deviations from your formal affidavit as a result of that cross examination which, according to you, lasted a day and a half?

A During my cross examination in the Flick Trial I did not make any changes of my affidavit of March of this year.

Q Dr. Stothfang, in order to expedite the proceedings I kindly ask that you make your answers as briefly as possible and to the point. The witness is with defense counsel.

CROSS EXAMINATION

BY DR. DIX:

Q Dix for Schneider.

THE PRESIDENT: I can assure you, counsel, that it will not be prejudicial if you do not consume as much time in the cross examination of this witness as was consumed in the other case.

DR. DIX: I want to apologize first of all for my being late, but my brother went to Berlin at noon and he had to discuss certain urgent matters with me.- It isn't my intention to extend the cross examination as long as was done in the other trial, however, I should like to get some knowledge of this question to clear up some fundamental questions. Was it not true, Dr. Stothfang, that already before the war foreigners had been requested by Germany?

A That's certainly true because when the war began there were 500,000 foreign workers here in Germany.

Q And this recruitment abroad was in whose hands?

A Solely in the hands of the German State authorities.

Q And as far as representatives of private enterprises were involved they were only representatives of private business or perhaps advisors, is that right?

A From before the war I know that representatives of private enterprise participated in the recruitment of

foreign laborers.

Q My question refers to the time during the war. I didn't make myself quite clear. Was my question clearly stated for the time during the war?

A Normally that was true.

Q The draft abroad was carried out, that is, employment, without any contract, that started only in 1943; is that right?

A As far as I know, apart from the Government General, in the Western territories, that is, France, Belgium, Holland, that started only in 1942, in drafting people outright.

Q And in the East with the exception of Poland?

A In the East the same probably applied since the first transports of Eastern workers began to come in the beginning of 1942 into Germany.

Q Am I correctly informed that these plans were made by instructions of the highest authorities due to the enormous difficulty in the production situation?

A That's undoubtedly correct.

Q I wanted to ask you whether in your agency, when these drafts started anybody voiced any misgivings of international law?

A During the cross examination in the Flick Trial, I already stated that officials, neither in meetings nor through intervention of any other office, for instance, the Foreign Office such misgivings on international law perhaps were raised. If at all then only in the circle of colleagues they were stated.

Q And these misgivings were disregarded because of the orders that were from the highest authorities?

A Yes.

Q If someone had not overlooked such misgivings and if some of the officials of the Ministry had been of the opinion that that was inadmissible that could not be done, what do you think would have been the results to such an official?

A I think he could have been dismissed of his position immediately if his attitude met with disapproval and he might have been punished more severely because they said he was a defeatist.

Q. You did not read all the Hague Convention on Land Warfare, as you already stated in the Flick Trial?

A. No.

Q. The question that I am putting to the witness are all contained in the Flick Case but I think I will facilitate matters if I repeat these questions, briefly here before the Tribunal instead of submitting the huge material during my Defense.

Did you, personally, in your office get to know of any grave unsatisfactory circumstances in the draft of Eastern laborers and could they be improved?

A. Serious difficulties concerning foreign labor did not become known in the Sauckel Office.

Q. I have a copy on the customary from which reads "Mission for the Recruitment of Industrial workers" -- which was also submitted in the Flick Trial, as Exhibit 659 -- May I be permitted to show this to the witness first of all and then submit it for identification to the Secretary General?

MR. SPRECHER: Mr. President, may we have it marked for identification in this trial as well?

THE PRESIDENT: It should be. Otherwise, we will not be able to identify it if we have occasion to need it.

DR. DIX: I shall at first read the heading first of all and then show it: "Application for the Recruitment of Industrial Labor." "As far as such manpower cannot be procured from Germany you should apply at the same time of the application for the allocation of foreign laborers and also an application of the business management to permit foreign workers to come in."

That's Exhibit No. 1 for Schneider. I submitted this blank, because from this affidavit the impression might emerge as though private business were those people who expressed the intention to get foreign laborers. Later that

may have been true for technical reasons true because one people is more suited for one type of work than another but as a matter of principle the blank proves that the entrepreneur registered his need for workers and that the labor office --

MR. SIECHER: May it please the Court, I think that counsel was going a little bit too far afield in testifying himself and if he continues to do that, it is going to take a very long time with this witness.

THE PRESIDENT: Well, the objection seems to be well-taken in this respect at least that whatever is established by the document that the witness has will be seen from the terms of the document. In other words, the document will speak for itself, and on that basis the objection will be sustained.

DR. DIX: Then with reference to the document, I ask you then whether it isn't true that the labor offices decided as a matter of principle whether an enterprise had foreigners or Germans assigned to it?

A. Without a doubt the labor offices on the basis of the application had to decide whether they would assign Germans or foreign laborers or perhaps prisoners-of-war, because we did not ahead of time know what manpower was available for us.

Q. I ask you further isn't it true that voluntary and involuntary workers were treated alike as a matter of principle in questions of salary, food, working hours, etc.?

A. I have learned of no differences in the treatment of foreign workers according to whether they were voluntary workers or forced laborers.

Q. It's true, isn't it, that the German authorities endeavored not to make the character of people coming to Germany as involuntary workers known in Germany?

A. The state authorities and the enterprises themselves were interested in this case for questions of production.

Q. And it became known far and wide only very slowly that many foreigners came in voluntarily?

A. That may be true.

Q. How high do you estimate the share and the number of the voluntary workers and involuntary foreign workers who came to Germany during the war?

MR. SPRECHER: Mr. President, I would like to object, first, on the ground that it's beyond the scope of the affidavit, so far as I can tell off hand, and, secondly, that there are findings in the IMT concerning this point and unless counsel intends to bring new evidence of a substantial nature neither counsel for the defense or prosecution, in my opinion, are free to challenge these factual findings in the IMT.

THE PRESIDENT: Does counsel for the prosecution mean to say that there is a specific finding of fact of this character would be binding on this Tribunal, that would be a complete answer to this propounded question as to the percentage of voluntary and involuntary laborers? Is that your view?

MR. VAN STREST: Your Honor, I have in mind one statement from the IMT which is directly on point and that is a statement by Fritz Sauckel made in the Central Planning Board when the question was propounded to him as to the percentages or percentage of voluntary workers coming to Germany. Sauckel answered that out of five million not more than 200,000 came voluntarily and that, as I recall, was cited in the IMT judgment.

THE PRESIDENT: Perhaps we are not understanding each other. What I was wondering was there anything in the judgment of the IMT in the nature of a finding of fact by the Tribunal that fixes the fact about which counsel for the defense is inquiring. We think then that certainly the

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defense would not be bound by some testimony in the record in the IMT case and I am expressing no opinion on behalf of the Tribunal as to how far the judgment would go but, at least, it would stand on a different basis.

MR. SPRECHER: Mr. President, I think that your point is very well taken. It is not merely in the testimony itself quoted in the IHT decision, but on the other hand, I do not think it does good so far, now that you have raised the question, as to make it exactly binding that percentage fixed by Sauckel is the percentage, and therefore I withdraw.

THE PRESIDENT: Very well.

Mr. Witness, if you have in mind at this time, the question that was propounded to you by counsel, you may answer. If you don't you may ask him to repeat it.

A In the circle of my colleagues we had the opinion that on the basis of estimates that accurate statistical documents, that the proportion of those workers who had come to Germany voluntarily during the war, amounted to approximately 50 per cent. This proportion was higher during the first years of the war, and during the last years of the war it decreased to less than 50 per cent.

DR. DIX: Then I have another question in regard to supervision of recruiting. Before the workers were recruited, they were physically examined; isn't that right?

A Yes.

Q And then their further life was supervised by the authorities also in the private enterprises?

A From the Plenipotentiary for the labor commitment there were certain regulations issued which concerned themselves with the care of the foreign workers. There were also police regulations which concerned themselves with the supervision of the foreigners in Germany.

Q In this connection, I have a question to you. As far as you know the circumstances, did a private entrepreneur ever insist on having the foreigners treated worse than they already were, or isn't it true that he always intervened for better treatment for them?

MR. SPRECHER: May we have just a moment, Mr. President. In my view this is quite a bit beyond the scope of the affidavit that we want

to check with Mr. Van Street.

If Dr. Dix could point out something in the affidavit which goes to the question of what the employers' desires were with respect to the good or bad treatment of these workers, then I clearly think the question is in point, but neither Mr. Van Street nor I can find any such testimony, even remotely, in the affidavit.

THE PRESIDENT: What is your view on that subject, Dr. Dix?

DR. DIX: There is no special part in the affidavit about the treatment of the workers. I only propounded the question because the affidavit discusses recruitment and allocation employment of foreign workers quite generally. I am convinced, this was also done in the Flick trial, that this question enters the scope of the principal affidavit.

I have already finished most of my questions that I am taking from the record of the Flick trial. I believe that three-quarters of the time has already elapsed.

THE PRESIDENT: It has been called to my attention by one of my associates that he thinks there is something in the affidavit about the employer being responsible for accommodations and food. Is that true; is that found?

DR. DIX: Yes.

THE PRESIDENT: Then this would not be so far from that as to make it inadmissible, and the objection will be overruled.

BY DR. DIX:

Q I wanted to ask you, Dr. Stethfang, whether you know anything about the position of the Italian Military Internees?

A From my personal experience, I know of no case in which employers, plant leaders, or representatives of German industry intervened for having the working conditions of the foreign laborers made worse in any way.

Q Then I shall ask you the last question, if it was true that the employers often intervened for having working conditions improved, especially in the case of Eastern workers, because they were worse off in

their salary and so on?

A I can only confirm that industry tried to a large extent in the field of food supply, and also in the field of clothing, and also by granting them rewards for production, that the position of the Eastern workers was tried to be improved in comparison to the other foreigners.

Q Now I am asking you about the Italian Military Internees. Was their position like that of prisoners of war, or was it more to be compared to foreign workers; what did you know about their positions?

A I was asked the same thing in the Flick trial, and I had to explain at the time that I did not know any more the details about the arrangements about salary, and food, their legal position of the Military Italian Internees.

Q Dr. Stethfang, I would like to ask you whether prisoners of war were used in the armaments production by directives of highest authority, - that is, by directives of Hitler and Goering?

A Since I personally was not the expert in questions of labor commitment of prisoners of war, I cannot answer your question in this form; but I should assume that such directives were given.

Q Then I shall not ask you any more in regard to this point, I would have had another question otherwise. Dr. Stethfang, as far as you know conditions in Germany, it was certainly true, wasn't it, that the predominant part of industrialists and agricultural employers during the war did employ foreigners during the war?

A I am convinced of that, since besides the prisoners of war, there were about 8 million, 7 to 8 million, foreigners, foreign laborers, in Germany, including the prisoners of war.

Q Then I have a legal question, of which, of course, I do not know whether you can answer it or not; and if you cannot, then please tell me. When workers did not come voluntarily, it was of course, important that that person who had come voluntarily, could not return, and in that case, I wanted to ask you whether the fact that they could not return, was based on general German regulations which prohibited notice of cancellation of a

working contract without approval of the authorities.

Do you know that, or don't you?

A Counsel, this question cannot be answered in that form. The question of draft for labor, has nothing to do necessarily with the question of the possible return of workers, and in the same way, the question of return has nothing to do with the cancellation of the authorities consent to the labor contract.

Q I did not understand that fully. I am not speaking of drafting for labor; I am speaking of the voluntary contracts. It was true that according to German regulations a dissolution of such labor contract was only possible quite generally, with the approval of the labor office; that's correct?

A Yes, that's correct.

Q Then I have one further question. You will certainly know, Dr. Stethfang, that for decades, hundreds of thousands of so-called "Saxon Walkers" were used in German agriculture. Is that true?

A That is true. Before the first World War broke out we had already approximately 1 million foreign laborers. One half of them worked in German agriculture, and the others worked in the German traffic industry and in other industries.

DR. DIX: I have no further questions.

DR. HOFFMANN:

Q Witness, do you know under whose jurisdiction the concentration camp inmates were?

A They were under the jurisdiction of the Reich Security Main Office.

Q Do you know to what extent; that they were under their jurisdiction for all of their activities, for their stay, and their entire life?

A I am convinced of that.

Q No further question.

THE PRESIDENT: Is there anything further from the Defense? Any re-direct examination?

MR. VAN STREET: No re-direct.

JUDGE MORRIS: May I inquire of the witness one question? As I remember your testimony, at the beginning of your taking the stand you said that drafts for labor in the East began in 1942, with the exception of Poland. Now I would like to inquire about Poland. Was labor drafted from Poland also?

THE WITNESS: Yes.

JUDGE MORRIS: When did that draft begin?

THE WITNESS: Before the war with Poland broke out interstate negotiations between Germany and Poland had been carried out, and on the basis of these interstate negotiations and agreements that were carried out every year. Poland had obligated herself to furnish about 30 to 40 thousand workers in 1939 to Germany, if I recall correctly.

This obligation to make 30 to 40 thousand workers available, because of the ever increasing international political tension and the Poles did not fulfil this obligation, or they fulfilled it only to a small extent, and therefore, after the war broke out, the German Labor administration began to erect agencies after the country had been occupied, so that the autumn harvest could be brought in.

Q Just a moment. The autumn harvest -- was that the autumn harvest of 1939?

A No, that was the autumn plowing after the harvest of 1939.

Q Were Polish laborers drafted in the autumn of 1939?

A I cannot remember whether, at that time, drafts for labor of Polish workers were carried out for labor commitment in Germany. I am of the opinion that that had not happened in 1939 yet, but that it was started only in 1940, by reason of the regulations which the Government General issued, and that Polish laborers were brought to Germany by force.

Q That was in 1940?

A That is my opinion.

JUDGE MORRIS: Thank you.

REDIRECT EXAMINATION

BY MR. SPRECHER:

Q Dr. Stothfang, just one question on that point. Do you recall whether or not a law was published in the official German Law Book for Poland, a public document, in 1940, concerning the compulsory drafting of all Polish workers?

A I cannot remember that. I have a vague recollection that in 1940, in some form or other such law was issued either by German Reich Law or, more probably, it was a decree of the German Government General, in a similar manner to which it was done later in the Protectorate, whereby a new law was created which made it possible to recruit Polish laborers by force and to bring them to Germany. However, I cannot give you any details as to what form this law had and what legal basis existed in the Government General for this forced commitment of labor.

Q You said the "Protectorate". I didn't quite understand what you meant.

A I merely wanted to make a comparison in the Protectorate of Bohemia and Moravia Czech laborers were drafted, and I believe in the Protectorate it was more clearly recognizable that laws of the Government

of the Protectorate were the basis which gave the authority to bring these people to Germany.

Q And approximately when was that compulsory labor law passed in the Protectorate?

A I do not remember the time; I really cannot tell you. I don't believe that it happened during the first years of the war; I rather assume that it happened in 1942, but I cannot remember that distinctly.

MR. SPRECHER: Thank you.

RECROSS - EXAMINATION

BY DR. WAGNER (Counsel for the defendant Wurster):

Q I have only one question.

Mr. Witness, you confirmed, a short while ago, that industrialists often intervened with the authorities to improve the conditions of the foreign laborers. Do you know, perhaps, that the plant in Ludwigshafen, in 1943, submitted a very detailed expose to the Reich Labor Ministry, with suggestions to improve the conditions of the Eastern workers?

A I did not learn of the existence of such an expose.

DR. WAGNER: Thank you very much.

BY JUDGE HERBERT:

Q Mr. Witness, I have one question.

Q As I understand your testimony, the form that was used in requesting the labor specified that if German workers were not available it would be treated as an application for foreign workers or prisoners of war. Now, in actual practice, would it have been possible for an employer to say, "We do not want foreign workers or prisoners of war"? What that have been possible?

A That possibility did exist certainly. The employer was not obligated to employ foreigners or prisoners of war. He had merely to count on the possibility that a general application for workers could not be fulfilled with German workers, since they were no longer available, and therefore the blanks stated from the beginning that the employer should state his readiness to employ foreigners or prisoners of war instead of Germans.

Q Do you know of any instances of employers who refused to take prisoners of war or foreign workers?

A No, I know of no such instances.

DR. DRISCHEL: I should like to ask the following in connection with the question of your Honor.

Witness, do you consider it possible that a German employer, who had certain orders to meet certain production requirements, could refuse to accept foreign workers if others were not available to him?

A No, such a refusal was not possible under conditions in Germany.

Q Wasn't the entire production situation at that time of such a nature that it was generally steered by the Reich Government so that, practically, an employer was put into the entire plan of production where he could not refuse to accept foreign workers?

MR. SPRECHER: Your Honor....

DR. DRISCHEL: That is in connection with the question of the Judge.

MR. SPRECHER: That may be your opinion, Counsel.

Mr. President, the question takes us an awfully long way. May I suggest a number of things which are involved? The question of whether or not an employer, by not building the proper barracks or taking the proper kind of care which is required preliminarily, in any event, with respect or not he could, by lack of initiative, not go into certain kinds of production, which the Reich may have ordered. All these things are involved in a question put to Dr. Stothfang, who is a labor expert on labor applications and commitment, and he is now being asked this rather involved question, which I think is beyond the scope of the examination by the Court.

THE PRESIDENT: I think the rule is that, when the Tribunal feels that it would like to propound questions, as it freely may do, that that grants to both sides the right to crossexamine as to matters gone into.

The objection is overruled.

BY DR. DRISCHEL:

Q Witness, do you still remember my question?

A Yes.

Q Can you answer it?

A For purposes of steering the armament production, Germany had created a ministry of its own, first under Minister Todt, and later under Minister Speer, in which the entire planning of the German armaments industry was carried out with the aid of smaller agencies even the direction of private enterprises was carried out. An employer could not evade that, or he could only evade such large-scale planning with difficulty. He could hardly evade this planning at all.

DR. DRISCHEL: I believe that answers the question.

BY DR. DIX (Counsel for the defendant Schneider):

Q I should like to put one more question in this regard, Dr. Stothfang. You said, quite correctly, that as a matter of principle the employer was not compelled to accept foreign workers. Just as my colleague Dr. Drischel, I am now thinking of wartime. If, in a large plant—let us say in 1941—an employer refused to accept foreigners, could he expect to get adequate other workers, German workers?

A Your question cannot be propounded in such a theoretical form, because labor allocation was something dynamic, something fluid, which shifted constantly in regard to German workers, as well as in regard to foreign workers and prisoners of war. Judging from the concrete, overall situation concerning labor commitment at a given time, it could be seen only then whether any special desires of the plant leaders might be taken into account or not.

Q But it was true, was it not, that during the war such a desire in the case of a large plant could never been complied with?

A You cannot say that in that form either. May I remind you that, for instance, in 1944—at the end of July 1944—Reich Minister Dr. Goebbels, was made the Reich Plenipotentiary for Total War, and it was one of his main functions to make workers available for armaments, and not only for the armed services. As the outcome to these measures, the result was restrictions in German industry and the closing down of

cultural institutions. I assume that you, defense counsel, recall all these things yourself. At that time the German labor administration was still able to recruit German laborers.

DR. DIX: Thank you.

MR. VAN STREET: No further questions.

BY DR. HOFFMANN:

Q Witness, I have two questions to put to you. The first one is as follows:

In your opinion, did the German employers accept foreign laborers in order to further their own profits, or did they take them because the State had given them tasks to fill and they needed these foreign workers for that purpose?

MR. VAN STREET: May it please the Court, I object to that question, it is purely conjectural and it is asking the man for an opinion which I don't believe that he has any basis in his experience for answering.

DR. HOFFMANN: Mr. President, I only listened to the translation, but I had the impression that perhaps my question was in the same direction in which the Judge's question was propounded, and therefore I wanted to ask it clearly.

THE PRESIDENT: Mindful of the fact that counsel said he only had two questions to ask, the objection will be overruled.

BY DR. HOFFMANN:

Q. Please answer, my question is clear?

A. Yes, it is.

Personally, I am of the opinion that a German plant manager, during the war, had to meet and met the production orders that had been given him in order to fulfill an obligation. Quite independent from that, the question of profit enters into this too. However, it was decisive, first of all, that he personally had to meet an order which had to be fulfilled.

Q. My second question is this: Under these circumstances, was an employer not also forced to employ concentration camp inmates?

A. The details of the agreement are not known to me according to which the Reich Security Main Office was the competent authority concerning the use, in enterprises, of concentration camp inmates. Therefore, I cannot state that such a question should have to be answered in the affirmative, and I cannot say that it should be answered in the negative. Therefore, I cannot answer the question at all.

DR. HOFFMANN: Thank you.

THE PRESIDENT: Mr. Witness, you are excused. The Marshal will escort you from the box.

(Witness excused)

Call your next witness.

Who is your next witness?

MR. MINSKOFF: May it please the Court, before the next witness comes on, the Prosecution would like to introduce several documents.

THE PRESIDENT: Very well.

MR. MINSKOFF: We also want to call the Court's attention to a

difficulty that has arisen with respect to the document book, No. 76. It is this large Hospital Book, and we were informed that at least two copies were delivered to the Court. I am now told the Court hasn't any copies of the Hospital Book.

THE PRESIDENT: We never have seen them.

MR. MISKOFF: It may be a matter of just a couple of moments, we hope, before the copies are delivered, then.

MR. SPENCER: Mr. President, in connection with this Hospital Book, we have a considerable reproduction problem. This problem was discussed by Dr. Mueller, the General Administrator for the Defense Counsel in this case, and I assume it was taken up with Dr. Seidl, because I was informed that he was principally interested and was agreeable to the proposal we made.

The document in question is a very large Hospital Book which contains certain entries. Naturally, it is in the German language, and we merely wished to call attention to the nature of certain of those entries. I think you have already heard defense counsel make use of that book in connection with getting some points out of witnesses.

We are not in a position to reproduce all of that book. With great difficulty I think we got seven copies altogether, and we have placed several at the disposal of the defense, one to Dr. Seidl, and one for the record, and we had hoped that two for Your Honors would do under the circumstances. We don't expect to translate any portions of that Hospital Book, but merely to indicate the nature of the entries and the number of entries on certain pages, which will then be reflected, in our view, properly in the record. If you are not satisfied at any particular point, we would be glad to have extracts made, but it is a good deal like an accounting book.

THE PRESIDENT: Well, there is a little accounting concerned in it so far as the Tribunal is concerned. It is quite a volume of material to keep track of. Do you mean that you will subsequently supply books to the members of the Tribunal, or parts of books, or are you intending to furnish two books for the use of this Tribunal? We try to keep our files indexed

and summarized so we know where we are, and I should like to know what your plans are in that respect.

MR. SPRECHER: Well, among other things, a witness or two will make reference to it. We thought the documents should go in evidence as an entire document because the thousands of entries in there have a certain significance, in our opinion, and the Defense has already indicated that they have a certain significance in their opinion. However, it is a good deal like an accounting book, from which a tabulation might be made or from which conclusions could be drawn by an expert witness or by counsel when he is merely making mathematical calculations concerning the nature of these entries. We will have no objection to such calculations made by defense counsel if they are in accordance with the entries in that book, and we don't think they should have any objections to our calculations. And if they do, then we will reproduce those parts of the book which would furnish the basis for the tabulation.

Mr. President, it has been suggested to me by Mr. Minskoff, and I think with good ground, that if you had your photostatic copies of the document before you, you probably would be in a better position to see the problem we have, and I don't think you would be as greatly troubled as I think you are momentarily.

THE PRESIDENT: Couldn't we pass this matter up until we get a little more clear as to what the situation is? We have rules to go by here and it is much easier to get lax and depart from standards than it is to get back onto it after some precedents have been established; and as presiding officer I am reluctant about the precedent we may be establishing here that will be embarrassing to us before we get through with the trial of this case, if we don't keep some semblance of good faith observance of our practice. It may be possible that we can work that out some way, to have some abbreviated record or something that will supply us with at least references that will enable us to get the material; and we will be glad to talk to you about it if you will bring some representative of the defense counsel in our chambers. If you can pass it up temporarily, we will under-

take to work out some procedure that will meet the problem, but I don't think it is best to just throw down the bars here now and get our record confused and have us all in more trouble than we presently are in.

How about these witnesses that you gave notice on this morning? Does that involve these documents? Have you any that—

MR. MINSKOFF: The witness that will come on, Your Honor, will be a witness who will testify in connection with the conditions at the hospital.

This is the book.

(Books submitted to Tribunal)

THE PRESIDENT: Would it be possible later, if these photostats are admitted in evidence as an exhibit, to furnish us with a translation of the parts of the document that will be serviceable to us, four copies of it, so we can keep our files up?

MR. MINSKOFF: Yes, Your Honor. If one page is translated that will be a translation of the entire document, because it is all a series of pages concerning entries of patients into a hospital, their names, the date, the departure, so that if one page is translated you have the necessary German words into English that you would require for the entire document.

THE PRESIDENT: Does counsel for the Defense have something to say?

DR. SEIDL: (Counsel for the defendant Duerrfeld): Mr. President, we have already looked at the book. It has considerable probative value, but it has disadvantages because, in the case of individual patients, the sickness is not mentioned, the current number, only the number of the prisoner, the date when he was admitted, the date when he was released, and furthermore, one column concerning where the man was sent to. We found that there are 15,707 entries. We have further found that 689 people died, 1,396 were sent to Birkenau, 1,121 were sent to Auschwitz, and the remainder, that is, 12,501, were sent back into the Farben plant as fit for work, or in other camps.

I don't think it is very useful to translate any page of this book. I am of the opinion that the book can only be exported as a piece of

statistics, and that it would not be useful for the Tribunal at all if some pages are translated, since all pages are alike.

MR. SPRECHER: Mr. President, you have your copy before you now, and Dr. Soidl, if you will take your forms, perhaps we could just translate right now the main headings.

THE PRESIDENT: Let's wait a moment, now. Now what is this document, on our record? Let's not be talking about a paper here that the record won't show what it is. Do you wish, at this time, to have this document assigned a number and introduced in evidence?

MR. MINSKOFF: I was going to introduce that in about three or four minutes, Your Honor, but the discussion came up as to the availability of the book. I wanted to introduce, first, the two documents remaining in the preceding book. This is a book by itself so it will follow in chronological order.

THE PRESIDENT: We will permit you, whenever you are ready, to introduce the photostatic copy of this document. If there is no objection, it may be considered in evidence. As to what, if anything, is necessary to have copies, or how it is to be made available to us, we will deal with that subject later, then.

MR. MINSKOFF: Thank you.

THE PRESIDENT: Now which book--you are going back to 75?

MR. MINSKOFF: No. 75, Your Honor.

THE PRESIDENT: You may proceed.

MR. MINSKOFF: The next group of documents, if it please the Court, deal with the treatment of the sick and disabled at I. G. Auschwitz. The first document we mentioned a little earlier today is #6190 and that was marked for identification and we passed that because of an objection to that which has been sustained.

The Prosecution now offers document NI-4827 as its Exhibit 1484. The next document is already in evidence as Exhibit 1469. The following document NI-5847 is offered as Prosecution Exhibit 1485. NI-11707 is offered as Prosecution Exhibit 1486. NI-11700 is offered as Prosecution Exhibit 1487.

JUDGE MORRIS: Would you pardon me just a minute until I catch up. I seem to have some confusion here.

THE PRESIDENT: You may proceed.

MR. MINSKOFF: And 11061 as Prosecution Exhibit 1488. NI-10928 as Prosecution Exhibit 1489. The following document is already in evidence. That is NI-7967, already Prosecution Exhibit 1452. We offer NI-10932.

DR. WHITE for Koorlein: I object to the submission of document NI-10932, an affidavit of Olga Lengyel. And I make the motion to reject this affidavit as a piece of evidence. I assume that the Tribunal knows this affidavit already as to its contents. Whoever reads this affidavit must gain the impression that for the most and for the decisive part, the witness does not state any of her own observations or any of her own knowledge, but only rumors and stories of third parties. As can be seen from #22 of the affidavit the witness is a writer. As she states, she rendered an eye witness report about the things that happened in Auschwitz and that she has written a book about this with the title "Five Chimneys". I believe that I may assume that this affidavit is an abridged edition of this book "Five Chimneys". Further, the affidavit in a summarized form, speaks about all sorts of things but nothing is stated from the author's own observation. There is

hardly one paragraph in the affidavit in which stories of third parties are not referred to.

In the decision of the Tribunal of the 7 November it is stated that under reference to Article IV of Ordinance VII, paragraph a, and according to Article VII it must be a fundamental right and privilege of the defendants that the defendant should be given an opportunity to test and to clarify by way of cross examination statements that incriminate him in any way. For that reason the Tribunal refused to accept an affidavit if the affiant had died in the meantime. On the basis of this principle and in connection with the general principle of procedure, according to which a witness can only and should only testify what he himself saw or observed but that he should not testify what was reported to him by third parties, an affidavit must exclude everything that is based on rumors or hearsay. All that which is only a conclusion of the witness must be excluded as inadmissible from the affidavit. As this witness Lengyel makes matters told to her by third persons the subject of her affidavit then it is true that that represents an observation but this observation can only be admitted if a possibility is given to investigate or check such an observation.

I direct your attention to paragraphs 2, 4, 5, 6, 11, 13, 15, 16, 18, 19, and 21 of this affidavit. In all those paragraphs the witness, Olga Lengyel, refers to reports without indicating the name of the person who made those reports to her. Under paragraph 11, sub-section 2, the witness says: "I believe I can procure addresses of people all over Europe, of people who were with me in Auschwitz, and who reported to me in detail about the atrocities which were perpetrated by civilian supervisors of Farben." A conscientious witness, if he bases any of the statements in an affidavit on third persons and if he raises such serious charges, should indicate the names and addresses of those persons. He must not be satisfied to point out in a rhetorical way that he could give addresses of his informants. I believe, however, that it should be the duty of an interrogator to ask the witness who makes

such statements for the addresses of his informants. All this did not happen in the case of this affidavit so that the defense of the defendants who are incriminated by the testimony of Olga Lengyel has no possibility to prove that the information of third parties given to the witness, Olga Lengyel, are not true. Such an affidavit is inadmissible because it violates the basic right of the defendants. A large part of the testimony of this witness is based on stories of her husband, Dr. Lengyel who was plant physician in Auschwitz and Monowitz. I refer, Your Honors, to 46 and 9 of the affidavit. Dr. Lengyel seems to have died as I see from paragraph 22 of the affidavit. The most serious accusations are based on the stories of the deceased Dr. Lengyel.

THE PRESIDENT: Dr. Kalte, would you mind an interruption? I think you have said enough that we have a general idea of your views. In about three minutes it is time for our afternoon recess. Would you mind yielding to Counsel for the Prosecution long enough to have the views of the Prosecution so that we can discuss this matter in chambers. Then, if you wish to be heard afterwards we will afford you a further opportunity when we come back if that is agreeable to you.

DR. KALTE: Dr. President, may I not cite the last reason very briefly? The last reason is that I am of the opinion that according to the decision of the Tribunal the submission of an affidavit into evidence was declared inadmissible if the affiant is no longer alive. Then for the same reason the testimony must be rejected if the witness bases her affidavit on stories of a deceased, namely in this case, Dr. Lengyel, for it cannot be possible that the testimony of Mrs. Lengyel has any probative value if the affidavit of Dr. Lengyel would have no probative value if, after he had made an affidavit, he had died in the meantime.

THE PRESIDENT: I will say to the Prosecution that the Tribunal has not had the opportunity to read this affidavit thoroughly but we have sketched over it and it is somewhat apparent from the face of the

thing that it is very largely hearsay. We are not in a position to say that there may not be some statement of act that would be admissible if it were segregated from the surplusage. What is your view on this?

MR. MINSKOFF: If it please the Court, there is undoubtedly much material in the affidavit which is based on statements that her husband made to her which she repeated in the affidavit. There is no objection on the part of the Prosecution to strike from the affidavit purely hearsay matters. On the other hand there is contained in the affidavit material important and significant which is based on personal experiences in Auschwitz. As to such material Prosecution contends it is admissible in evidence.

THE PRESIDENT: You have not only that situation but you have in this affidavit, expressions of opinions which might under some circumstances be regarded highly prejudicial to defendants on trial in a criminal case. May we suggest that you eliminate from the affidavit any material that you concede to be incriminating and see what we have left and see whether Counsel for Defense wants to prefer any other objection to it. It seems to me personally that a large percentage of the affidavit is probably not competent at all and I may say the matter concerns the Tribunal. If that affidavit goes into the record I am not in a position to say how long a cross examination it might justify for much of this is admittedly incompetent to begin with. So during the recess confer among yourselves and see what you have to say when we come back about eliminating clearly incompetent hearsay and let's see what will remain then.

The Tribunal will now arise.

THE MARSHAL: There will be a fifteen minute recess.

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Has the Prosecution anything further to say with reference to the offer of this document in view of our suggestions?

MR. MINSKOFF: May it please the Court, we would like to offer the document for identification and discuss its contents with the Defense and agree upon a portion which would be relevant to this case.

THE PRESIDENT: Very well. What number will you give it?

MR. MINSKOFF: 1490. With respect to Prosecution's Exhibit 1484 --

THE PRESIDENT: Pardon just a minute, Counsel.

Now I believe so far as my index indicates, you have offered all the documents in this book except the last one. Do you intend to offer it?

MR. MINSKOFF: Yes, Your Honor.

THE PRESIDENT: Would you mind giving it the number now, and then we will allow you to make whatever statements you wish to make.

MR. MINSKOFF: Not at all.

THE PRESIDENT: Very well.

MR. MINSKOFF: The Prosecution offers NI-10942 as its Exhibit 1491.

THE PRESIDENT: Now you may make whatever statements you wish to make.

MR. MINSKOFF: The Court's attention is drawn to page 161 of the English, 188 of the German. It is an affidavit of Mr. Treister, an inmate of Monowitz, referring to hospital conditions. He states and I quote:

"During my work in the hospital building I noticed that two or three sick people were in one bed. Linen sheets were only used in the Internal Department; medicine was practically non-existent. For 180 prisoners there were 20 aspirin and 5 to 10 Cybasol tablets.

"There were no toilets in the hospital building. A wooden barrel stood in the corner and patients who could not leave their bed could neither wash nor use the barrel."

The Court's attention is drawn to Prosecution's Exhibit 1486,

the affidavit of Captain Ian Osborne Bradford Spencer, pages 171 and 2 of the English and 188 and 9 of the German, where he states:

"I should like to mention the fact that when we first arrived in our camp of I. G. Auschwitz, I was taken aside by one of the I. G. Farben officials whom I judged by his manner and retinue to be one of the big-wigs. He stated in clear and no uncertain terms that in order to meet necessary production efficiency, I was to keep the sick list, i. e., those permitted to abstain from work, to a maximum of 3%.

"As a practical matter, of course, it was impossible for them to enforce any such strict percentage, and the sick list was often 10% to 15%. However, they did attempt to enforce their demand for maximum production efficiency by sending down weekly a Doctor Bonk who was an employee of I. G. Farben, acting in the capacity of an assistant to Dr. Foeschel, also of I. G. Farben. This Doctor Bonk would "re-examine" in an examination lasting about 30 seconds per man, the prisoners whom I or the other British doctor had already designated as unfit for work.

"In a majority of the cases he would declare them to be fit in spite of the fact that because of the cursory and superficial nature of his examination he couldn't possibly have been in a position to know whether or not they were in fact fit. After we protested that we had already expressed our opinion as to the fitness of the prisoners for work, the German doctor left and on the following day German guards with fixed bayonettes marched the designated prisoners of war off to the I. G. Farben factory."

The next document is merely corroborative of the same story of Captain Spencer, and we pass it without further comment and call the Court's attention to Exhibit 1488, page 177 of the English and 204 of the German where the affiant states:

"The Buna administration supervised continually the conditions in the Monowitz camp where the Buna workers lived; the SS had sent only 55 sanitary personnel and physicians to the Monowitz camp for

supervising the inmates on the special request of the Buna administration, which declared that more than 55 persons could not be employed and that Buna would pay to the SS only for those people."

We pass without comment the exhibit, 1489 and 1492. With respect to Exhibit 1491 the Prosecution merely calls attention to the fact that the TIA approved an expenditure for Buna and Auschwitz of 153,000 and 10,000,000 marks respectively.

THE PRESIDENT: Mr. Prosecutor, on our desks is a document, NI-12365, purporting to be the affidavit of Felix Rausch. Is that a part of this book, or where does that go?

MR. MINSKOFF: Why, I think it would be good to put this document in at the end of this document since it will be the next document offered in evidence.

The Prosecution offers at this time into evidence NI-12365 as its Exhibit 1492. At this time the Prosecution would like to have Mr. Rausch called as its next witness.

THE PRESIDENT: The Marshal will bring in the witness.

MR. MINSKOFF: We would like to introduce also the hospital book which is NI-10186 as Prosecution's Exhibit 1493.

THE PRESIDENT: Will that be regarded then as an exhibit of this book, in this same book?

MR. MINSKOFF: That is right, Your Honor.

THE PRESIDENT: Very well.

MR. MINSKOFF: No. No. Oh, I am sorry. I didn't understand your question. This is a separate book. It is designated as Book 76, Your Honor.

THE PRESIDENT: This is Book 76.

MR. MINSKOFF: That is right.

FELIX RAUSCH, a witness, took the stand and testified as follows:

THE PRESIDENT: Will the witness remain standing for the purpose of being sworn. Raise your right hand, say "I" and state your name.

THE WITNESS: I, Felix Rausch,

THE PRESIDENT: And now repeat after me: swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT: The witness may be seated.

DIRECT EXAMINATION

FELIX RAUSCH

BY MR. MINSKOFF:

Q Mr. Rausch, what is your full name?

A Felix Rausch.

Q And where do you reside?

A In Vienna.

Q With respect to your affidavit, which is now Exhibit 1492 of the Prosecution, are there any corrections or additions you wish to make at this time?

A No.

MR. MINSKOFF: That is all for the Prosecution.

THE PRESIDENT: The Defense may cross-examine.

CROSS EXAMINATION

BY MR. DEISCHER (Counsel for defendant Ambros):

Q Mr. Rausch, on page 3 of your affidavit you describe your tasks in the office of the hospital of Konowitz. First, let me ask who was employed in that office in which you were active?

A The office at first had one employee working there. That was not I, I was the second, employee. And up to the dissolution of the camp the employees increased and at the end there were four inmates.

Q Witness, were you the head of these inmates in the office?

A No, I was not the head; I was the Second Clerk.

Q But it appears from your affidavit that you had insight into the conditions prevailing there?

A Yes.

Q Who was your superior?

A My immediate superior was the First Clerk of the hospital, the inmate Eymann.

Q Is that Stefan Eymann?

A Yes; Stefan Eymann.

Q And who was Eymann's superior?

A. Eymann's superior was the so-called Camp Eldest of the hospital who was, at the end and for the longest time, the inmate Stefan Budziszewski, a Polish doctor.

Q. In your affidavit you say that among other matters you had to deal with the correspondence of the SS physician; you had to deal with releases ordered by the doctors, and similar matters. Who were the doctors to whom you refer?

A. The physician on duty was the SS camp physician; starting from November 1942, when the camp was opened, until 1945, when the camp was evacuated, various SS physicians were on duty.

Q. In other words, the SS were in charge of medical matters?

A. Yes.

Q. You go on to mention that you had to carry out statistical tasks; you had to register all people who came in and who were released, etc. Did you keep the so-called sick book in your department?

A. Yes, in our department.

Q. Can you say who the person was who kept it?

A. Yes; I was the one who kept it.

Q. May I put this book before you and let me ask you whether it is the same one which you kept, as submitted by the prosecution in the form of a photostatic copy? (Document presented to witness.)

THE PRESIDENT: For the record it shall be stated that this is Book 76, which is Exhibit 1453; is that correct?

DR. DRISCHER: Thank you.

BY DR. DRISCHER:

Q. If you kept it yourself, can you tell me why this book starts with 9,794? Is it perhaps because other sick books were kept before this particular one?

A. That is true. This is the second one—but not the last; a third one was also available.

Q. Are the numbers entered in sequence?

A. Yes; the first book started with No. 1 and the other numbers

were in consecutive order.

Q Can we then on the basis of these numbers get a survey of the total number of patients in the hospital, if I assume that the first book was started when the hospital was opened, that is, from No. 1 up to 9,793...and then the second book started as from the seventh of July 1943, with number 9,794, up to the last number, with the date of the 19th of June 1944?

A This is correct.

Q Witness, does this book comprise all inmates who went through the sick-bay?

A It comprises all inmates who were admitted to the sick-bay--but not all those who were treated there.

Q In that case it does not include the out-patients?

A No, it does not include the out-patients?

Q These entries were made by you?

A Yes.

Q Are they correct; are they true and correct?

A Yes, the entries are correct.

Q Now, witness, if this sick list as it is before us was compiled from the seventh of July 1943 until the nineteenth of June 1944--that is approximately a period of a year--and if it includes 689 entries of dead, then I must assume that these are all the dead who were registered at the sick-bay?

A Yes; these are all the dead who at that time died in the sick-bay, that's correct.

Q Is it possible that further mortalities arose?

A It is not only possible, but it is certain. There were far more cases. These are all the people who were transported away from the camp for the purpose of killing.

Q Are these persons who were transported listed in the sick book?

A Only in so far as they were transported from the sick-bay itself, and not from the barracks of the camp proper.

Q Are these the persons—or let me put the question differently. How were these persons who were sent away for gassing registered in the sick bay?

A It said either "Sent to Auschwitz," or "Sent to Birkenau."

Q Mr. Reusch, do you mean to say by that that all people who, according to this book, were sent to Auschwitz or Birkenau were sent there only and solely for the purposes of gassing?

A I can state the following limitation. Those inmates who, according to this book, were sent to Birkenau went directly to be gassed in every case. All those inmates, however, who were sent to Auschwitz, according to the entries of the book, were intended for gassing originally, but now and again it happened that a few of them were excused from gassing when they arrived at Auschwitz.

Q Is it not true that transports were returned to you from Birkenau?

A From those inmates who, on the basis of our lists, went to Birkenau—none returned.

Q Mr. Reusch, is it correct if, according to the book, I estimate those people who were sent to Birkenau to be 1395... and even if you add the people who were sent to Birkenau you arrive at a total of 2,085 during the period of one year who have to be considered to have died.

A These inmates can be considered to have died with certainty, but not only these inmates. I think I must repeat something. You only mentioned those who were sent to Birkenau. You have to add those who were sent to Auschwitz because if somebody was released from gassing at Auschwitz that was only an exception; and then you must add those inmates who were sent from the camp to Birkenau without at all having passed through the sick-bay.

Q I wanted to ask you the following question, witness, we have 669 death cases confirmed and even if we assume that those who were sent from the camp directly to Auschwitz and Birkenau also died, then arrive at the figure of 3,206. Now, how many do you think can be added to

this figure for the period covered by the sick book.

A As far as I remember, the number of those who directly, from the barracks of the camp, were sent to Birkenau, without having passed through the sick-bay at all, was three or four times as high as those who were transported there, from the sick-bay.

Q And now, at what total figure of inmates do you arrive—in other words, as far as you remember, what was the total number of inmates between 1943 to 1944?

A The total number of inmates in the camp normally was 10,000 inmates. In the course of the year of 1943 the total increased up that figure by the summer of 1944.

Q What is the time when most of the people were there?

A That is the time I refer to.

Q If you then say that three or four times as many were sent directly from their blocks to Birkenau and Auschwitz, and if I put to you now that we then arrive at an approximate figure of seven to eight thousand persons—can that be approximately true, covering that period of time?

A The figure of seven or eight thousand for that period of time is too low an estimate for that period of time.

Q But you only had 10,000 people there?

A But this number fluctuated. Not only people who departed from this total figure of 10,000 were sent away; but those who went were replaced by others and again sent away.

Q But not all of them were sent to Auschwitz or Birkenau?

A No, not all of them were sent there.

Q. In other words, is it true that this fluctuation generally occurred because of arrivals and departures?

A. I did not understand your question.

Q. Is it true that the constant change can be explained by arrivals and departures of inmates quite independently of Birkenau and Auschwitz?

A. The constant changes can be explained by a number of things because some people were sent either to Auschwitz or Birkenau or to other camps as well.

Q. Can you give me a percentage according to which one could see how the transport to Auschwitz and Birkenau is in connection with this change?

A. The number of inmates who were sent into other concentration camps from Monowitz in relation to those who were sent to Birkenau for purposes of killing, was very small.

Q. Did you keep any statistics about that?

A. I daily received the reports from the camp office regarding the total number of inmates there, because I needed it for my own files.

Q. Were these reports sent by you to Farben, or only to the SS?

A. I sent these papers only to my superior.

Q. In other words, you would not assume that these statistics were sent to Farben?

A. On the contrary! I am convinced that the I. G. daily know exactly what the total number of inmates was in the camp; they had to be informed, because they sent food to the inmates.

Q. Is it true that the food delivered fluctuated according to general changes, and not only according to changes brought about through transport to Auschwitz and Birkenau?

A. Well the food sent changed every day according to the number of people in the camp.

Q. Then, witness, how can you explain that Farben could have deduced from the total number of people in the camp every day, - even granting that they did receive such reports, - how many people had died,

and how many people had not died?

A. These mass transports to Birkenau for gasings were always the consequence of the decrease of the productive output in the camp. One could see a difference in the output at all times, and it could not have been the same thing when weak inmates were killed, or when other inmates were sent into other camps for political reasons.

Q. Well, how could you possibly see that from an ordinary, strength report? You just stated that through the strength report total numbers of inmates came to the knowledge of the I. G. but from that the I. G. could not possibly deduce whether some of these inmates were gassed or died in any other way?

A. I have already stated that the fluctuation of the camp's population was known to the I. G. These conclusions you drew, Counsel, and not I.

Q. In other words you are not drawing this conclusion?

A. No.

Q. Neither do I. Witness, another question. How were such selections carried out? I am referring to these matters on page 7 (a) of your affidavit. Who was in charge of selection?

A. This was done by the SS camp physician. He was not only in charge of it, but actually carried it out.

Q. Who else was present. Were you there?

A. I know inmate-physicians were there, clerks were there, nurses were there, as far as such selection took place in the sick bay.

Q. Were any members of Farben ever present?

A. No.

Q. Witness, would you have been able to save one or the other of the inmates selected, and see to it that he was not transported away?

A. Such possibility did exist now and again.

Q. Witness, was it quite clear to you that all of these persons who were selected, were only selected for purposes of gassing?

A. That was quite clear.

Q. Please explain how.

A. I can explain every inmate who left the camp, who was transported away from the camp, irrespective of whether he was transported alone or with larger transports, had to pass the sick bay. He did not have to pass through the sick bay and become a patient there, but he had to undergo an examination for release. This examination was carried out in order that all of those who were not fit for transport were to be taken out. That, however, was only true of such transports which went into other camps. In the case of transports sent to Birkenau or Auschwitz, the fitness of undergoing this transport was not only not examined, but it was evident that only such inmates went along there who were not fit for transport for the previously mentioned purpose. That was one thing certainly. Secondly there is an abundance of witnesses, not only I, but inmates who were present and who reported these matters to us, who can testify to the effect that the transports which were sent to Birkenau went directly there to be gassed.

Q. Who were the inmates who told you about these matters? Those who were sent away?

A. Our camp elders, the physician, Dr. Budziszczek, who, one day, when transports were sent to Birkenau, was there on duty and say these things with his own eyes.

Q. Did Dr. Budziszczek himself participate in the selection?

A. Dr. Budziszczek, in the same way as other inmates, had to participate in the selection by doing administrative work.

Q. Dr. Rausch, did you at any time talk to SS physicians or other physicians about the fact that these selected persons were to be killed?

A. Certainly not. I did not speak to an SS physician about these matters. That would have been suicide. Nobody knew anything about it officially.

Let me continue —

Q. One more question. Other persons in Monowitz or in the sick bay itself, also did not know that such selections were carried out for

gassing purposes.

A. Every one knew it. Every child within a 50 kilometer radius knew about it.

Q. How then am I to understand your remark when you said, "We did not know it officially"?

A. Officially, because one just did not talk about it, because one would have endangered one's life if one had talked about it.

Q. Thank you.

I am now passing on to another question.

A. Excuse me, I did not finish my answer. You wanted evidence to the effect that these transports went straight to Birkenau.

Q. Witness, you misunderstand your function here. Let me tell you that you are only to answer those questions which I put to you. My question actually was answered.

MR. MINSHOFF: Mr. President, if the witness indicates that he has not finished his answer, he will be permitted to finish his answer.

THE PRESIDENT: That, of course, is correct. The witness ought not to be deprived of making a full answer, but we assume now that he has made it. Had you answered the question now, Mr. Witness?

THE WITNESS: No, I wanted to submit a third evidence, a third point of evidence in addition to the first two which I had already mentioned.

THE PRESIDENT: Very well, You may complete your answer.

A. Thirdly, the clothing which the inmates received on transports to Birkenau and things such as glasses, always were returned to our camp immediately after the inmates had been sent to Birkenau in the same cars in which the inmates had been taken away. However, those things of the inmates who were left alive, their glasses and artificial limbs, were always kept.

DR. DRISCHEL:

Q. I am now turning to another point. How was the sick bay equipped - let me firstly put to you, that in your affidavit on page 4, paragraph 3, and I quote: "In the sick bay of Monowitz there were 6 to 7

hundred beds". How was the other furniture and equipment in the sick bay?

A. It is not easy to answer this comprehensive question.

Q. Let me phrase it differently, witness. In normal times, witness, did the number of beds suffice, and was it true that every inmate had his bed once he went into the sick bay?

A. The number of beds were always insufficient.

Q. In your affidavit you have said that sometimes there was as many as 1100 patients. Is it true if I assume that this high number represented an exceptional state of affairs?

A.. This number, 1100, which I mentioned for instance, represented an exceptional case.

Q. How high was the normal figure generally of people housed in the sick bay?

A. One can hardly speak of a normal figure. This is how it looked ordinarily. The number of patients continued to increase until it had exceeded 10 per cent of the strength of the entire camp; as a consequence of that, transports were always sent away to Birkenau.

Q But basically there was one bed for every inmate?

A Basically one bed should have been provided for every inmate but that wasn't done mainly because the patients allowed were ten per cent of the strength of the camp, which would have amounted to 1000 patients only, and, if you consider that the camp had ten thousand people, you must consider they only had 600 or 700 beds.

Q How many physicians were working?

A In the sick-bay, about 20 inmate-physicians were employed. I cannot give you the exact figure.

Q And how about SS-physicians?

A The SS-physician was not working in the sick-bay itself. The SS physician visited us every second or third day to carry out inspections and issued his orders.

Q How many nurses were there?

A The total number of administrative inmates allowed in the sick-bay were 50 or 60. Among those 50 or 60 were approximately 20 physicians, clerks and other auxiliary help and approximately 20 nurses.

Q Am I correct in assuming that from the point of view of treatment and nursing care, sufficient care had been taken, only from the point of view of space you were in trouble because it was inadequate?

A From the point of view of care and treatment, care was taken because we illegally employed more inmates in these capacities than we were permitted to do.

Q Who was the person in charge of these matters?

A The Camp Physician.

Q Am I correct in assuming, Mr. Rausch, that all directives which you received with reference to your activities, with reference to the sick-bay, were issued from the SS-administration?

A I have one circumstance which shows this is not true and refers to the question with which we are dealing now. The order that no more than 50 or 60 nursing personnel were to be employed in the sick-bay emanated from the SS Camp Physician. At the same time, however, this

sane SS physician tolerated the illegal increase of these 50 or 60 people.

Q How does that exclude my assumption that this Camp-Physician was responsible to issue orders for all matters pertaining to the sick-bay?

A If a man tolerates the violation of an order which he, himself, has issued, he was caused by another agency to issue the order in the first place.

Q This is a very biased conclusion on your part, witness. What was your impression which you gained when you first came to Monowitz?

A My first impression when I came to Monowitz was very favorable, only later did it get worse.

Q During the time when you were at Monowitz did you ever assume that another agency than the SS was in charge of the camp administration and leadership?

A From the very beginning until the end I was convinced that that was the case.

Q In conclusion let me put a personal question to you? Why were you sent to the camp?

A I was arrested because of crossing the border without permission.

Q Do you belong to a political party?

A Yes..

Q What party?

A I belong to the Communist Party of Austria.

Q I have no further questions.

BY DR. SEIDL:

Q Dr. Seidl, counsel for the defendant Dr. Duerrfeld. Witness, were you at any time in the Concentration Camp of Auschwitz?

A I stayed there for only one week in October 1942.

Q Do you know that in the Concentration Camp of Auschwitz there was a huge hospital having many more beds than Monowitz?

A I know that.

Q Could it not be assumed by an impartial observer that a transport of an inmate to Auschwitz was carried out in order to treat him there whenever he fell sick?

A If one doesn't know further developments one may perhaps arrive at this assumption.

Q But in particular it is true that in the Concentration Camp of Auschwitz there were huge operating rooms with all therapeutic equipment?

A I know that.

Q Were you, yourself, at any time in the Concentration of Birkenau?

A No.

Q Did you find out that there was an even more modern hospital for the inmates?

A I know it.

Q Do you also know that even more modern operating rooms, X-ray machines, even more equipment was there than in Auschwitz itself?

A I don't know that.

Q Under these circumstances can one not assume that a sick patient was sent from Monowitz to Birkenau for the purpose of subjecting him there to a better treatment, I mean for one who doesn't know all of the close connections?

A With this limitation I would say yes.

Q Witness, before you stated that the SS had jurisdiction in the sick-bay. You said furthermore that the Camp-Physician gave a large degree of latitude to the inmates.

A Yes.

Q Do you know that the Camp Physician in every concentration and labor camp from a disciplinary and professional point of view was subordinated to the Oberarzt, Chief Physician, Dr. Lolling, who was employed by the Economic and Administrative Main Office of the SS?

A I know that.

Q The official designation was Chief Physical K. L. with the WVHA; is that true?

A Yes.

Q In the camp hospital in Monowitz did you ever see correspondence addressed to Concentration Camp Physician Lolling, Berlin?

A There was never any correspondence directed to Lolling because there was an intermediate physician. It was the SS-Standartarzt at Auschwitz.

Q Then the camp physician in camp always received the directives from the Standartarzt in Auschwitz?

A That's to be assumed.

Q And that physician was an SS physician, was he not?

A Yes.

Q Under these circumstances could one not assume that with reference to the restrictions of patients in sick-bay the orders came from this man or did these orders come from Berlin?

A I am even convinced that the camp physician of Camp Monowitz did not receive his orders from an office outside the SS but received his orders from his superior.

Q That's sufficient, thank you, witness. You stated that there were 700 beds in the camp hospital of Monowitz?

A Six or 700. I don't know the exact figure. I don't quite remember it.

Q Now, if I compare Camp 4 numbering 9 to 10,000 inmates with a town of medium size don't you think you would have to agree with me that only few of such towns have a hospital of six or 700 beds and that the number of available beds should have really been sufficient?

A Counsel, in a normal town this number of beds certainly would have sufficed but practice has shown that in the camp of Monowitz this number did not suffice and one simply got ill much easier than in a normal town.

Q How high do you estimate the number of inmates in Monowitz at the time you were there, who, though being treated medically, were not received in the sick-bay?

A This estimate of mine has been stated in my affidavit. The out-patient treatment goes up to 200,000. Of course, I cannot say exactly how often each individual inmate might use such out-patient treatment.

Q Is it correct that many of these who received out-patient treatment who were not received into the sick-bay were relieved from their work and could stay in their barracks?

A This so-called "reprieve" permission to stay in their barracks was given, but this was an emergency measure which was only taken when the number of sick was too high in the particular camp.

Q At any rate the consequence of this emergency measure was that the sick inmates did not have to go to work?

A That was the direct consequence and the second consequence was the selection following soon thereafter because the inmates were missing from the plant.

Q You said, witness, that according to your estimate the number of those who were selected outside the sick-bay was three times as much as the number of those who were selected in the sick-bay itself. Did you observe these facts yourself or was it the general opinion or did you get these facts from hearsay?

A In your question the word "estimate" is incorrect. I am not referring to an estimate but I referred to memory. I always received these reports exactly from the camp administration since I needed them for my statistics.

Q Witness, is it not true that very frequently patients who were transferred to Auschwitz returned to the camp after many months in a healthy state?

A It happened, but not frequently.

Q Witness, is it not true that patients who were housed in the sick-bay were not transferred to the I. G. Plant or to the camp 4 but to

one of the 28 labor camps which belonged to the administrative sphere of the plant Auschwitz? Let me remind you that it appears from the sick book that this was so.

A I can explain that very well; those inmates who were in the sick-bay of Monowitz and who were sent to other labor camps were either inmates who were brought to Monowitz for purposes of treatment and then went back to their own camps or in some cases they were inmate-physicians who were in Monowitz so that they could be trained for physicians in another camp.

Q Witness, your statement is very valuable to me.

THE PRESIDENT: The Tribunal at this time will rise until nine thirty tomorrow morning.

(A recess was taken until 0930, 14 November 1947.)

Official Transcript of the American Military Tribunal VI in the matter of the United States of America against Carl Krauch, et al, defendants, sitting at Nuernberg, Germany, on 14 November 1947, 0930-1630, The Honorable Curtis G. Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI. Military Tribunal VI is now in session. God save the United States of America and this Honorable Tribunal. There will be order in the Court.

THE PRESIDENT: You may report with respect to the attendance of the defendants, Mr. Marshal.

THE MARSHAL: May it please Your Honor, all the defendants are present in court.

THE PRESIDENT: Any preliminary announcements from the prosecution?

MR. SPRECHER: None, Mr. President.

THE PRESIDENT: Anything from the defense?

Counsel may proceed with the examination of the witness.

MR. SPRECHER: Mr. President, yesterday evening you adjourned rather abruptly and we didn't have any time for announcements and we did announce to the defense, at that time, that the French witness Afrine would come today.

THE PRESIDENT: Very well.

Counsel, pardon, just one moment. This might be an appropriate time for the Tribunal to make an announcement. That is, that this court room will not be available for our use on Monday morning because of the arraignment in another case. However, we shall convene, as usual, at 1:30 Monday afternoon.

CROSS EXAMINATION - Continued

FELIX RAUSCH - Resumed

BY DR. SEIDL (Defense Counsel for the defendant Duerrfeld):

Q Witness, last night you said that into the sick bay of Camp IV inmates from other labor camps were sent.

A Yes.

Q Do you know how many labor camps there were, all together, around the concentration camp of Auschwitz?

A I don't know exactly how many labor camps belonged to the concentration camp of Auschwitz, that is to say, all the three concentration camps of Auschwitz. I think there were approximately forty. With reference to Auschwitz Camp III, which was later called Monowitz, about twenty camps were affiliated.

Q These twenty labor camps, for a part, sent their sick to the hospital of Camp IV. Is that true?

A If I just said "yes", it would be a misleading answer. These twenty, or more than twenty labor camps, in the course of all the time hardly sent more than thirty inmates to the sick bay of Monowitz. These were only special cases where an operation was necessary which could not be carried out in the other camp.

Q Am I correct in assuming that these other labor camps had their own hospitals, too?

A Yes.

Q Witness, do you know that the first aid station of I.G. Farben in the plant was prohibited to care for inmates who had an accident in the plant and that they were told to notify the hospital of Camp IV about any such incident?

A I don't know of it.

Q Didn't you hear about a correspondence which arose as a result of such an incident and where the SS Administration, or the Standortarzt of Auschwitz turned to the I.G. and made complaints?

A I heard nothing about it at all.

Q In your affidavit you stated, furthermore, that in addition to the thousands of sick who were received into the sick bay, there were one hundred fifty to two hundred thousand out patients. Is it true that part of this large number was received into the so-called barracks where they could get rest?

A These so-called rest barracks are not included in that field. These barracks only existed during the last two months of the existence of the camp of Monowitz. That was at the time when gassing at Birkenau was no longer carried out.

Q How many barracks of that sort existed all together. Were there two or were there four?

A I cannot say it with certainty.

Q Witness, do you know that in Camp IV there was a so-called illegal camp administration or a self-administration of the inmates?

A I didn't know of any illegal camp administration.

Q How about a self-administration by the inmates?

A There was the official self-administration through block elders, clerks, etc. This was true of every camp.

Q Stefan Hymann played a leading part in the self-administration?

A No. Stefan Hymann was only a clerk in the sick bay and, in this capacity, he had no influence at all on conditions outside the sick bay.

Q You stated, furthermore, in your affidavit that you had to compile statistical surveys. Is it correct that such statistical surveys were sent to the Standortarzt of the SS at Auschwitz?

A These statistical surveys were partly sent to the

Standortarzt at Auschwitz and partly kept in our office where they were hung on the walls in form of curves and charts.

Q You also made reports on the daily sick?

A Yes.

Q In the course of the years, Camp IV increased considerably, did it not? May I conclude, therefore, that the number of patients increased in the course of the years, as a consequence?

A Yes.

Q With reference to these reports which were made daily about the number of patients, did you also report on the decrease of patients?

A Well, we made reports about general movements incoming and out-going patients. We made reports about who came in, who went out and who died.

Q The content of these reports coincides exactly with the entries which you yourself made in the sick book?

A Yes, it coincides exactly with my entries. There were no forgeries at all, either in the sick book or in my reports.

Q Thank you.

I have no further questions to this witness.

THE PRESIDENT: Is there to be any further cross examination of this witness?

None being requested, the Tribunal asks the prosecution now, do you desire to reexamine the witness.

MR. MINSKOFF: I have a question, Your Honor, please.

THE PRESIDENT: Very well.

REDIRECT EXAMINATION

BY MR. MINSKOFF:

Q Mr. Rausch, when a transport left Monowitz for Birkenau or Auschwitz, did they go through a disinfection room?

A Whenever a transport was sent to Birkenau from the sick bay itself, which was always simultaneous with the transport from the camp proper, the inmates were not disinfected, but the disinfection room served as a collecting room for such inmates.

Q Would it be possible then for a transport of newcomers to Monowitz to come in on the same day that transports were leaving Monowitz?

A That would not have been possible technically, and was never the case.

Q So that when transports came in and transports left they couldn't cancel each other out on the books, but there would be necessary fluctuations of the strength of the camp?

A Yes. In such a case it could not have occurred that arrivals could have appeared on the same day, of the same amount as the departures of the day. Any such fluctuations would always become apparent from the books.

Q Thank you.

RECROSS EXAMINATION

BY DR. SEIDL (Defense Counsel for the defendant Guerrfeld):

Q Witness, your activity limited itself to the sick bay, is that true?

A Yes.

Q How then can you know that on the same day when, let us say, fifty inmates were sent to the hospital at Auschwitz, there were not another one hundred inmates who were received through your office into the sick bay?

A As a clerk in the sick bay I was informed about all

arrivals into the camp because all arrivals into the camp not only concerned the office, but had to pass through the disinfection room and the hospital, first of all, where they were superficially examined in order to see that no diseases were carried into the camp.

Q You said that it would not have been technically possible that on one day one hundred fifty patients went to Auschwitz, and on the other hand, a hundred came into Camp IV on that same day.

Just one minute.

Why shouldn't that have been technically possible? I put to you that this would have been a very simple matter.

A I have not said fifty or one hundred inmates. The transports to Birkenau were much, much larger. The transports to Birkenau included from the sick bay alone at least two hundred fifty to three hundred inmates, and the disinfection room, in the case of every departure of such a large number of inmates, was never ready to receive arrivals of a similar amount.

Q In that case I must put to you that from the sick book which you yourself kept it becomes apparent that repeatedly groups of twenty, ten and thirty patients were transferred to Auschwitz and that similar groups were sent to Birkenau. That can be seen from the book which you yourself kept in Camp IV.

A One has to clarify this question. There were two periods. One has to make a distinction between these two periods and this falls into the time when this sick book was kept. Up to the time of November, 1943 small groups were first of all sent to Auschwitz. The gassing was, in that case, carried out individually, so to speak. In many cases, inmates were transferred through the sick bay without actually having been admitted into the sick bay as permanent patients. For purposes of transfer, they were only received into the sick bay on that very day.

Let me continue, please.

It then became evident that this manner of transport was not expedient and did not suffice for the I.G. plant and, for that reason, in December, 1943, one started a change in the procedure. Then, starting with the 7th of January, 1944, the large mass transports started. On the 7th of January, the 23rd of January, etc., and you can see all that from the sick book.

Q Witness, in that case, let me put to you that the sick book, which you yourself kept, extends up to June, 1944, and that during that half a year, in part, it becomes evident from that book that no large mass transports were sent to Auschwitz or Birkenau, but that there were only groups of twenty, ten and thirty patients, or even less. Do you still maintain your statement?

A Yes, I still maintain my statement. Please just count these figures in the sick book and you will see. I know what I am talking about. These are not theories, but these are facts.

Q How many transports from July, 1943 until June, 1944, were sent to Auschwitz and to Birkenau? I am now asking you about the transports and not about the number of patients.

A I naturally cannot give you the exact number of transports, but from memory I can tell you that at the time when small transports were sent out - that falls into the first half of this sick book - such transports left nearly every second day. The large transports, starting from January, 1944, were sent off approximately twice a month.

Q In that case, we have twelve large transports only in the year of 1944, according to the sick book?

A Approximately, yes.

Q And you are saying that such a large transport comprised two hundred fifty people?

A Yes.

Q In that half a year we would arrive at three thousand people, would we not, and I am now putting to you that throughout the entire year, starting from July, 1943, until June, 1944, only thirteen hundred people were transported to Birkenau.

A Just add up the transport figures of the 7th of January, the 23rd of January, etc., and you will find that these transports were just as large as I said they were.

Q We'll do that, witness.

I have no further questions.

THE PRESIDENT: Anything further, gentlemen?

The Tribunal is about to excuse the witness.

(Witness excused)

Call your next witness, Mr. Prosecutor.

MR. MINSKOFF: The Prosecution's next witness is Professor Waits of French nationality.

THE PRESIDENT: The Marshal will bring in the witness.

MR. MINSKOFF: May the Prosecution offer at this time, if it please the Court, Document 12373 as Prosecution's Exhibit 1494. It doesn't appear in any book, Your Honors. It might be added to Book 75.

THE MARSHAL: May it please Your Honors, the witness is not available.

THE PRESIDENT: The Tribunal understands the Marshal to say the witness is not available. What do you have to say to that, Mr. Prosecutor?

MR. MINSKOFF: I was told he was on his way down to the courtroom. He is in the building.

THE PRESIDENT: Gentlemen, we are wasting a good deal of time in this trial by witnesses not being present when they are needed. The Tribunal

would appreciate a little more careful attention to the attendance of witnesses. A few moments lost here and there amounts to a good deal in the course of the day.

Mr. Prosecutor, have all the documents on Count III now been introduced?

MR. MINSKOFF: No, Your Honor, there are several books of documents to be introduced.

THE PRESIDENT: We would suggest that you have available the books next to be offered so that if we do have these delays we do not waste the time and we can, at least, get a few documents in evidence, after this.

MR. MINSKOFF: Book 79 is next, in case there is a delay. It will be Book 79; 77, Your Honor, I meant to say.

THE PRESIDENT: Have you dispatched somebody for this witness?

MR. MINSKOFF: Yes, Your Honor. I was told he was on the way down.

ROBERT ELIE WAITZ, a witness, took the stand and testified as follows:

THE PRESIDENT: Mr. Witness, you will remain standing for the purpose of being sworn as a witness. Raise your right hand, please.

Do you swear to speak, without hate nor fear, to say the truth, all the truth, only the truth?

You will raise your right hand and say "I swear".

THE WITNESS: I swear.

THE PRESIDENT: You may be seated.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q Professor Waitz, what is your full name?

A Waitz, Robert Elie.

Q And where do you reside?

A In Strasbourg, 67 Allee de la Robertsau.

Q With respect to your affidavit, Prosecution's Exhibit 1494, do you have any corrections or additions you wish to make at this time?

A No.

Q Professor Waits, are you now or were you ever a member of the Communist Party?

A I never was a member of the Communist Party and even today I am not a member of it. I want to say that in France such a question is not propounded to a witness.

Q That is all. The witness is with the defense.

THE PRESIDENT: Mr. Witness, because it is necessary that your testimony be translated into English for the benefit of the Tribunal, it is important that you speak to the point when questions are asked you, make your answers as brief as possible, and pause momentarily between the question that is asked and your answer so that the translation can catch up with us. Before you are two signal lights, one yellow and one red. Have these been explained to you?

THE WITNESS: No.

THE PRESIDENT: If the yellow light flashes, it indicates that you are talking too rapidly. If the red light goes on, it means that you shall stop speaking and not speak until told to speak.

Counsel may proceed.

CROSS EXAMINATION

BY DR. DRISCOLL (Defense Counsel for the defendant Ambros):

Q Professor Waits, do you have your affidavit in its original in the German or in the English language, and how did you submit it?

A I was helped for the translation.

Q I am only asking you because I notice that the original was obviously signed by you in the German language. Do you understand the German language so that you can really recognize every sentence of the original as being correct, and do you really understand the sense of every paragraph?

A I read German sufficiently well and am sorry not to be able to talk enough to help the Tribunal gain time.

Q. If I now put a phrase to you in the German language, taken from your affidavit, is there a possibility that you would not understand it properly, and you would only understand it in the original French?

A. I think I would understand it sufficiently well.

Q. Very well. In that case, witness, let me ask you.. From Camp Drancy you were sent to Auschwitz. Is that true?

A. Yes.

Q. Instead of being sent to Auschwitz, however, you were sent to Monowitz, were you not?

A. Yes, yes.

Q. What conditions did you find in Monowitz upon arriving there?

A. In what sense do you mean the conditions... in a material sense, or as far as life of the inmates is concerned?

Q. I want to know what conditions you found at the camp... in order, was it clean, how were you assigned, and so on.

A. When I arrive the camp was clean--

Q. Excuse me. I interrupted you. Continue, please.

A. The reception, however, was less agreeable than the proper camp. We were led into the court yard of the infirmary. That was in the month of October, 1943. We were left entirely naked, in the courtyard of the infirmary, for several hours. Five or six hours. And then we passed the shower rooms. And again we had to wait before the shower rooms. After the showers, entirely wet, unable to dry ourselves- we were rather cold --

THE PRESIDENT: Witness, please... Please reply to the question that you were asked, as to what the conditions of the camp were. Will you please try to confine your answer, in answer to the question asked. The Tribunal understands that you are now talking about your treatment. We understood the question of counsel to be what the conditions were. You may proceed, but try to limit yourself to a direct and simple answer insofar as you can.

A. Yes. The material conditions, hygienic, for instance, at that camp in October 1943 were sufficient, but there were no inmates at that time.

Q. (By Dr. Drischel) Thank you. That is sufficient. Where were you assigned to, Professor?

A. After a few days in the waiting camp I was assigned to the infirmary.

Q. Since you are a physician you did not have to do any physical work outside of the construction place, and throughout the entire time there in Monowitz you were in the infirmary, active as a physician, were you not?

A. Yes.

Q. With whom, of the camp administration, did you have any dealings there, Professor?

A. Mainly with the camp physician, with the SDG, and also with the camp leader.

Q. Would you briefly tell us who the camp physician was with whom you had dealings?

A. I knew one of the other three camp physicians - Endres, Fischer and Koenig.

Q. These were SS physicians, weren't they?

A. Yes.

Q. And what is SDG?

A. It was an SS non-commissioned officer, male nurse, who was charged with the administration of the infirmary under orders of the camp physician.

Q. The infirmary itself was mainly staffed by physicians among the inmates, as you were one of them?

A. Yes.

Q. Were there also other physicians, apart from you, who played the same part and who were used as physicians?

A. Yes.

Q. Could you give us one of the other names, briefly.. just to give us a picture - do you know a certain Dr. Budziaczek?

A. Yes, that was the Camp Eldest. That means, the responsible physician, responsible inmate physician, who had to report to the camp

physician.

Q. Thank you. Is it correct that the office where you were also active probably was staffed by a certain Stefan Hymann, and a certain Mr. Rausch?

A. Felix Rausch, yes.

Q. Within the administration of this sick-bay were there any other people active? I mean in addition to the self-administration of the inmates and the superior supervision of the SS?

A. No. Camp Elders, the physicians who were inmates, received the orders directly from the camp physician.

Q. Dr. Waitz, did you also know people from the I.G. Farben?

A. I would like to know... are you talking about leading men, or employees, workers, or foremen?

Q. I just want to put my question generally. Did you have any contacts with the I.G. in your capacity as camp physician?

A. A certain number of times I had to go into the interior of Buna—that means, outside of the camp; and furthermore, people of I.G. rarely came to the infirmary.

Q. I see. But your contacts were limited to your professional capacity with reference to patients, et.

A. Yes.

Q. In other words, you have no knowledge whatsoever about any directives with respect to the administration, or with respect to any agreements between the I.G. and the SS?

A. I knew the following things... I know what I heard from the camp physician.

Q. It is very dangerous to found your replies upon hearsay. I want to know what you know of your own knowledge. Do you yourself know of any agreements between the camp administration of the SS and the I.G. plant at Auschwitz?

A. Right from the first day of my arrival in the infirmary I was informed immediately that we had to limit the number of admissions of sick

inmates into the infirmary - because there was a quota related to the number of inmates of the camp. If we had that percentage, we were not permitted to pass the percentage for admission into the infirmary, which was 10% in winter, during the bad time; but during the better season, five, or six, or seven percent.

Q. Who told you that this percentage was in existence? Was it the SS physician?

A. The camp physician.

Q. Dr. Waitz, in your affidavit you are using expressions which go beyond your present statement, and which, therefore, justify the putting of the following question to you. That do you understand by saying that Monowitz was an extermination camp? Do I understand the word in German, "Vernichtungslager" - extermination camp?

A. Yes.

Q. What do you want to express by that? What, really, did you mean by saying that Monowitz was an extermination camp?

A. I want to say that it is a camp in which the inmates were exterminated; they died in one way or another, or disappeared very rapidly, one after the other.

Q. But some people are still alive. I am referring to your presence here.

A. Yes, there were a few who had the luck to survive, otherwise there would be no witnesses here today.

Q. Well, Dr. Waitz, by an extermination camp I would understand a camp which was designed exclusively for the purpose of extermination of human beings, the purpose of which only consists in extermination. Is that what you wanted to express by your remarks?

A. The result was the following: For extermination a maximum time of six months would normally suffice, an average time of three months after the individuals arrived in that camp.

Q. Dr. Waitz, is it not true that had you not been sent to Monowitz, but sent to Auschwitz, you probably wouldn't have been alive today? Don't

you think that you have to be grateful for being sent to Monowitz, and that you owe your being alive today to that fact?

A. Not any more than if I had been in Auschwitz. I know some who were sent to Auschwitz and who are still alive today. I don't know the percentage. Now, for instance, in Monowitz, when I arrived on the platform of Auschwitz, if I had been sent to the right side instead of to the left, I certainly would not have survived until today.

Q. If I understand you correctly, you want to say that the SS in Monowitz tried to gradually exterminate and kill human beings there?

A. Yes, but by using them for work while waiting for their extermination.

Q. Dr. Waiz, do you want to say, furthermore -- and be very careful about that -- that the I.G. Farben who used these human beings on their construction plant, had the very same intention of only exterminating people, and that they used them for that very purpose; or didn't you make a distinction between the SS and the I.G. Farben?

A. The I.G. knew what happened. I.G. didn't give to the inmates who worked in Monowitz material conditions which you usually give to workers who work in a plant. I.G. absolutely had to know of what nature the handling of their inmate workers was, who worked within their plant. They saw these skeletons, partly dressed, who had up to this managed to live and who had to carry cement bags of 50 kilos, or iron bars which hurt their shoulders.

MR. SPRECHER: Wait... Mr. President, I think the witness was in the middle of a sentence.

THE PRESIDENT: Just a moment. Mr. Witness, had you completed your answer or not?

WITNESS: No.

THE PRESIDENT: You may continue, and complete your answer.

A. (By the witness) To give an exact example: In the Eisenkommando, the iron kommando, and the Kabelkommando, which were the two worst commandos of the Buna plant -- the Cable Kommando consisted of five to six hundred men, who were renewed every month... they usually died within that time -- in that detail, in winter, I.G. Farben gave, from time to time, some clothing to the inmates, but in general there was only one inmate among ten who had gloves, and very often those who had to carry iron had the skin stuck to the iron. I.G., in my opinion, if it had worked as a normal enterprise as we know it in normal times, would have bothered about the efficiency of the workers. They had lists which showed what work was done by the five or six hundred men of a detail; that had to see that the results were absolutely a minimum. There was no efficiency, and in such conditions, certainly, a well directed enterprise should have had to look for the reason for such bad results.

THE PRESIDENT: Mr. Witness, you perhaps now have said enough. Wait for another question, please.

BY DR. DRISCHEL:

Q. Witness, even if such conditions had existed -- and I can't admit that they have -- this still was not an answer to my question. My question was whether you want to ascribe to the I.G. the intent to exterminate in the same way as you had in the case of the SS.

A. I don't know whether it was the same case, or whether it was simply an accomplice of the SS.

Q. But before, when replying to my question, you said that you did not know what legal agreements or contracts existed between the I.G. Farben and the SS with respect to the use of inmates. You do not know that, do you?

A. I answered that I talked to the camp physician, what I knew, and I knew from the camp physician that I.G. —

Q. That is hearsay.

A. By the camp physician.

Q. Very well. Now, witness, I don't want to load myself in technical details, but if the witness is mentioning this cable work detail I do want to do away with a wrong impression. Witness, were you ever out there, when the cable detail was at work?

A. No. But I was there during several hours to see how they worked.

Q. Do you know that such cable work was a well-thought-of, systematic, procedure and went according to a very certain scheme? It goes about a tram over levers, all sorts of technical apparatus. Do you know about that?

A. Yes.

Q. Do you know also that if such a technical procedure is being carried out, and if such a procedure is well considered, the individual task of every man is not beyond his human capacities?

A. This work is by far more complicated than that part which later on is done by German workers. Ditches have to be dug for the cables without any machinery, just with shovels. It was a manual labor. The men had to work in rain and in snow. And then they had to bring these enormous cable rolls which were in a store, in the extreme end of the camp, and they had to push it, and it was very exhausting

work to drag the cables within the dug ditches.

Q. I don't want to lose myself in technical details. But trenches have to be dug for other purposes, too, not only for purposes of laying cables. You can't consider this digging as being particularly difficult. Well, let's turn to something more specific.

THE PRESIDENT: That statement may be regarded as out of the record. It was not a question, but an observation of counsel.

Q. (By Dr. Drischel) Witness, in your affidavit you state contrary, to what you said now; "The desire of the I.G. to receive human beings fit for work in the largest numbers possible was the reason that selections were carried out in the camp of Monowitz." Is it correct if I assume that the ordinary, non-suspecting, reader would gain the impression that only upon the desire of the I.G. such selections were carried out, and is that what you meant by your statement in the affidavit?

MR. SPRECHER: Mr. President, asking him what the non-suspecting person would have found certainly is calling for an opinion; that is not proper.

THE PRESIDENT: That is true, but the last part of the question is proper, as to what he meant by his statement.

The witness may answer.

Mr. Witness, if you understand the question you may answer; if you do not, you may ask that it be repeated.

WITNESS: Please repeat it. I would like that the second part be repeated.

BY DR. DRISCHEL:

Q. With this statement, did you mean to say that upon the request of the I.G. Farben selections were carried out in Monowitz. Was this the reason for the selections in Monowitz?

A. I do not know whether that was the only reason, but I know that I heard the camp physician tell us repeatedly that it is no longer possible to continue in such a way, that he got information by I.G. who thought work was not efficient enough in the camp, and that the details were not giving enough work.

Q. Witness, where were these selections carried out, and what was the procedure?

A. The selections could be divided into three classes. In the first class there were selections made in the interior of the camp; and in the second class there were selections made in the interior of the infirmary; and finally, in the third class selections were made in the moment of the arrival of new convoys of prisoners that arrived in the camp, before they were sent to the camp, right after their arrival.

Q. Who carried out these selections?

A. The selections were carried out some times by the camp physician or the SDG; sometimes by certain prisoner physicians who were assigned to that task, but then, selections were never really made without a camp physician personally re-checking the sick people; or inmates were taken for the selection in the case they had been selected by a prisoner doctor.

Q. If I understood you correctly, the camp physician had the last decision with respect to the selection. The preliminary selection, however, was made by the inmate physician himself?

A. Not always. In some cases; in others it was the camp physician; but in the end it was the camp physician who had the decision of choice. We talk here, well understood, about executions.

Q. Dr. Waltz, were you yourself present during such selections?

A. Yes, I was present.

Q. Was any one of the I.G. present?

A. No, there was nobody of I.G.

Q. Dr. Waitz, in that case I must ask you whether the statement you made in your affidavit is to be corrected somewhat. You said that in the collaboration between the I.G. and the SS, such selections were obviously carried out by the collaboration.

A. I cannot change what I wrote. When the camp physician gave the order to make selections, he told us several times, and I heard it myself, that there are too many sick inmates and I.G. wants to have a labor force in a better physical condition.

Q. Did you only know that from hearsay?

MR. SPRECHER: Mr. President, this question of hearsay is, in my view, being used rather loosely by counsel and I think the observations to the hearsay rule as to who can make statements that bind somebody else covers a very broad subject, and I don't think that the observations of defense counsel made to the witness present, or are something in the nature of a lecture to him concerning his view on law, are particularly helpful in this trial.

THE PRESIDENT: The Tribunal, of course, cannot control the observations that Counsel make, and insofar as we deem them improper we shall ignore them. The Tribunal has noticed during the day a number of references to hearsay that would indicate that Counsel is putting a very narrow and strict interpretation on the terms. There are many exceptions to the hearsay rule that are recognized, one of which Counsel for the Prosecution may have in mind in his observations. That is that what ordinarily might be regarded as hearsay is not so regarded when it is coming from someone in a place of authority speaking for a superior, and, of course, we are all advised of the fact that this Tribunal has adopted a liberal policy in permitting hearsay to be offered when it is providing the basis of an opinion as to matters of general knowledge. We just observe at this time that the prohibition against hearsay perhaps is not as tight and as close as Counsel for the Defense has indicated. Be that as it may, it is not the responsibility of the witness to determine what is or is not hearsay. That is for the Tribunal, and it perhaps just burdens the record to make those observations.

Counsel may proceed with the examination of the witness.

BY DR. DRISCHEL:

Q. Let me put a final question to you with respect to the care taken of the patients in the infirmary. Dr. Waitz, is it correct that approximately fifty nurses and about twenty physicians were available if you take into consideration six to seven hundred beds in the infirmary?

A. Yes. However, it is good to make a distinction that one part was assigned to the beds or took care of the people hospitalized, and that the other ones took care of the out-patients that came in during seven to eight hours and which were sometimes here up to one thousand sick a day. On the other hand, they still had the functions of permanently going through the camp looking for lice.

Q. Dr. Waitz, how about the housing of the patients in the infirmary?

A In the dispensary where the people were hospitalized, or the dispensary for out-patients?

A I am now referring to permanent patients.

A They were lying in beds in tiers and sometimes two or three in one bed.

Q Were these exceptional conditions when the infirmary was overcrowded and on principle, was there a bed provided for each patient?

A No. We had not enough beds, and one can say that in the transit station and in the surgery it was a rule to see at least two sick in one bed, and it is unnecessary to say that these conditions of cohabitation were disastrous because dysentery on the one side and phlegmons on the other hand were evidently contagious. Furthermore, it was impossible for these people to get a rest if there were two or three lying in one bed.

Q Dr. Waitz, was this a normal condition or were these abnormally over-crowded conditions?

A It was a normal condition, and for that reason very frequently we asked the camp physician to get from the IJG, the authorization to take over new blocks for hospitalization where to billet our sick, and the camp physician came back, and I heard him say on three different occasions: "At the meeting from which I came I could not get an assignment of new hospitalization blocks for our infirmary."

The only time when we won our case we had a scabies epidemic which took extraordinary proportions since we had more than eight hundred infected scabies people who were infected all over the body and more than seven hundred with eczema of the face who had to be treated all the time. Furthermore, even the workers in the factory had to be treated.

Q Dr. Waitz, you mentioned before a percentage of about ten percent, and you said that everything over that percentage had to be transferred into other hospitals. Was this percentage ever kept up, or were more patients than that in the infirmary?

A As soon as the percentage rose, which was very easily to be seen for there was a big chart in the office of the camp physician which was a key to our functions — we could see on one side the daily charts of inmates of the camp, and on the other hand the number of people who were sick, either hospitalized in the infirmary or being assigned to rest barracks, and as soon as that percentage rose too high, the selections would start.

Q How high was the total number of patients at the time you were there. Just give me an approximate estimate.

A When I arrived in Monowitz — that means in October, 1943 — there must have been about five to six thousand inmates, but then progressively the number rose until there were around ten or eleven thousand. I am sorry, I add that a short time ago you asked me and you drew my attention to the number of male nurses in attendance, but that number is only valid for the time when we had ten to eleven thousand. In the beginning when I arrived, it was not even half that number in the infirmary.

Q Dr. Waitz, if in the case of six thousand inmates the percentage of ten percent had to be kept up and was kept up, as you said, then there were sufficient beds available for these six thousand inmates, because there were actually six to seven hundred beds.

A In the end. In the end, but not in the beginning.

Q Dr. Waitz, when you got there, the infirmary had already been built and was operating.

A There already was an infirmary.

THE PRESIDENT: Gentlemen, please, you are getting the signal light pretty frequently. Will you please slow down. This applies to Counsel and witness alike.

DR. DRISCHER: I beg your pardon, Your Honor.

BY DR. DRISCHER:

Q Witness, when you came, the infirmary was already operating, and according to material which we have which I can put to you, and accord-

ing to testimony by witnesses who were here before you, there were already six to seven hundred beds available. Let me put to you, Dr. Weitz, that in that case I can correctly assume that, assuming a number of six thousand inmates and ten percent of this number as patients, there was a bed for every patient available, is that true?

A No, not exactly, because we had more than that number which was the cause for the selections, and secondly, it is not possible to talk about the entire number of sick in a hospital. We have to talk about categories in a ward for dysentery or a ward for contagious diseases. We cannot change the sick from one ward to another one, as I said that especially in the ward for dysentery and the ward for surgery, we had one sick lying practically on top of another one.

Q I only wanted to make this remark in order to repeat my previous question. I wanted to ask you whether it does not become apparent that the overcrowding of the infirmary was an exceptional situation, and that, therefore, it was always an exception when two patients had to be in one bed?

THE PRESIDENT: We are consuming a good deal of time in this cross examination. The Tribunal is impressed with the thought that that is a question with respect to which the witness may agree or disagree with the question. He could answer, in other words, "yes", or "no" and save very much time.

Will you please do that?

THE WITNESS: I do not agree because if we had had a sufficient number of beds, we would not have sent really severely ill people as outpatients.

DR. DRISCHEL: I have no further questions, Your Honor.

DR. HELTE: Dr. Helte, Counsel for the defendant Hoerlein.

CROSS EXAMINATION

BY DR. HELTE:

Q Witness, under paragraph 4 of your affidavit, and also when testify-

ing today, you have spoken of an epidemic in the camp of Monowitz.

Do you still remember when this epidemic took place?

A The peak of that epidemic, if I am not mistaken, was in the Spring and Summer of 1944.

Q Witness, who was responsible for all the drugs which were necessary to cure this contagious disease?

A It was the camp physician who issued the orders, but I say that I know that very often he tried to get various things from I.G., especially sulfanilomides of which we had hardly any and which we couldn't get.

Q Do you mean to say that the camp physician could immediately approach the I.G. as far as his jurisdiction went?

A I don't know that, but I know that he tried to get sulfanilomides especially, sulfanilomides from I.G.

Q I am now talking about the contagious skin disease, scabies. Do you know about any efforts being made to obtain drugs to combat scabies, this contagious skin disease?

A I didn't understand your question very well.

Q I was asking you whether you knew that the camp physician or you yourself made efforts to obtain drugs from the I.G. to combat scabies?

A Yes, because the camp physician returned from the I.G. from Buna saying: "I have come from a meeting, and I tried to get sulfanilomides."

Q And what success did he have?

A As regards sulfanilomides we obtained none whatsoever.

Q In other words, you are saying that you received no effective drugs to combat scabies at all?

A Oh, yes. After about six months when the epidemic developed progressively and reached extreme proportions, we finally received a sulfonamide called "Hitigal" which permitted us to combat the epidemic.

Q Do you still want to maintain the statement which I shall now put to you, not only the request sheet from Elberfeld but also the card index from which the following facts can be seen:

"Order by the Special Plenipotentiary for the Combatting of Vermin at Auschwitz, 25 March 1944".

MR. MINSKOFF: Counsel should mark this document for identification.

THE PRESIDENT: Let Counsel complete his question, and the Tribunal will take care of the marking of the exhibit.

BY DR. NELTE:

Q I have a card index here from which it becomes apparent that an order sheet was sent to Auschwitz 19 March 1944 which was delivered on the 22nd of April, and starting with May, 1944, there were 40,000 kilograms "Hitigal", which is the most effective drug to combat scabies, actually delivered. Let me put the following question to you. Do you admit that it was not the camp physician who could approach the I. G. but that he had to turn to his superior agency of the SS? He had to approach the Plenipotentiary for the Combatting of Vermin?

A I myself don't know to whom the camp physician had to address himself, but the camp physician tried to get in touch with I. G. Farben which employed the inmates and which had an interest in seeing to it that an epidemic did not develop on the ground where they had workers.

Q Are these not arguments which you are making here? you said:

"I don't know to whom the camp physician had to address himself."

MR. MINSKOFF: May it please the Court, the answer is argumentative because the question calls for an argument rather than a fact.

THE PRESIDENT: That is true. Counsel, reform your question, please.

BY DR. NELTE:

Q Do you know from your own knowledge that the camp physician, in order to obtain drugs, had to turn to the administration of the I. G. Farben?

A I know that he did. I know that he tried to get some from I. G.

DR. NELTE: Your Honor, would you please ask the witness to reply to this question which is very clear with either "yes" or "no"? Does he know whether the camp physician in order to obtain medical drugs had to turn to the administration of the I. G. Farben, "yes" or "no"?

THE PRESIDENT: Just a moment.

MR. SPRECHER: Mr. President, the question is, as we got it in the translation, did the SS doctor have to turn to the I. G. or did he not? I presume Dr. Nelte means in terms of the regulations. I don't know. I don't understand the question in that sense. If he means what in fact did the SS physician do so far as this man, who was an immediate subordinate to that man, is concerned, the question is already asked and answered, and any further question is purely argumentative.

THE PRESIDENT: The chair is a bit confused as to the purpose of the question. It is not convenient here to read questions. We will ask Counsel again to state as simply and as directly as possible his inquiry, and we will then determine whether or not the witness shall answer the question.

Will you please do that, Dr. Nelte?

DR. NELTE: Yes.

BY DR. NELTE:

Q I am asking you do you know from your own knowledge that a camp physician whenever he wanted to obtain medical drugs for purposes of treatment had to turn to the I. G. administration, "yes" or "no"?

THE PRESIDENT: Can you answer that question, Mr. Witness?

THE WITNESS: No, I don't know that.

THE PRESIDENT: That is an answer.

BY DR. NELTE:

Q I didn't quite understand.

A No.

Q Witness, do you know that the I. G. Farben in order to combat the scabies epidemic, which you have mentioned, had sent the scabis-drug, "Mitigal", to Auschwitz in large quantities?

A I don't know. We received "Mitigal" in big drums, and I don't know where it came from.

Q Can you reply whether I. G. Farben, whenever they were asked by any agency to obtain medical drugs for the patients in the camps, actually did so?

A I cannot remember having seen medicines of I. G. origin, but certain of the medicines were not in the original packings.

Q May I understand your answer to mean that you do not know that "Mitigal" was produced and delivered by the I. G. Farben?

A The camp physician told us that he received a part of the "Mitigal" from I. G., and for that reason, by the way, we asked him to put pressure on the I. G. to get some sulfonamides.

Q Let me ask you what sulfonamide preparation you refer to in that connection?

A No matter what, if it only were sulfonamides.

Q Wouldn't it have been more expedient to use a drug which had already been tested as to its effectiveness against scabies, as, for instance, "Mitigal"?

A I think there is some confusion. There are two parallel things. On the one hand we had the treatment of the scabies for which, no doubt, sulfanilamides are little active, and on the other hand we had at the same time a terrible epidemic of pneumonia which killed our sick, and for

which we tried to obtain sulfonamides.

Q Witness, I believe that this confusion came about because you were speaking of sulfonamides, whereas I in this case only wanted to establish matters pertaining to the scabies epidemic. I am referring to a very specific case where the I. G. Farben, although they were not obliged to do so from the point of view of jurisdiction, produced these medical drugs by request of the camp physician. They produced these drugs in large quantities and you received them.

MR. SPRECHER: Your Honor, the —

THE PRESIDENT: It may be considered out. Go ahead.

DR. NELTE: Thank you very much, Your Honor.

Your Honor, I just want to give you the necessary numbers for identification. Two photostatic copies have been offered, one card index which will become Hoerlein No. 1, and then there is a letter by the Department Pharma-Packing, Leverkusen, dated the 8th of May, 1944, which will become Hoerlein No. 2 for purposes of identification.

THE PRESIDENT: Very well. Now, Counsel — and this applies to all Counsel for the Defense — in order to keep our records clear, the Tribunal thinks it necessary to ask that when you have a document or a prospective exhibit given a number even for identification, it should be deposited with our secretary. You may subsequently, if you care to, withdraw it by leave of Court, but if we should have documents marked and not filed, some very serious confusion might follow. You will understand, of course, that the document will not be considered in evidence or seen by the Tribunal simply because it is marked for identification only, but that if it is introduced in evidence, then it will be available to us. Merely as a matter of protecting our records and having these documents available, if it becomes necessary that we have them, we think you should when you have a document marked for identification file it with our secretary so that it will be available if and when needed.

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The Tribunal will now rise for its morning recess.

THE MARSHAL: There will be a fifteen-minute recess.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: May I just say just one thing further with respect to defendants' exhibits marked for identification only? The Secretary has called our attention to the fact that there is a standard folder that is necessary for the proper filing of these exhibits and a standard form of certificate which you may obtain at the Defense Center. If you will bear that in mind, and when you have documents of that character that you think you will wish to have marked for identification, if you will put them in the folder with the certificate at the time they are handed to the Secretary, it will facilitate the filing of the document and the location of them when you again need them.

Counsel may proceed.

ROBERT WAITZ (Continued)

CROSS EXAMINATION - Resumed

BY DR. PELCKMANN (Counsel for defendant von Knieriem):

Q. Professor, I am now considering your statement in your affidavit that Farben requested that no more than six or seven percent of the inmates be sick in the summer and ten percent in the winter.

By what sensible means, in your opinion, could this request be fulfilled?

A. It was impossible to satisfy that request in a reasonable way, for one should have built a hospital for eighty percent of the inmates in the camp of Monowitz—and let only ten percent of the inmates work.

Q. You mean to say then, Witness, that the medical means would have had to be more simple and would have had to be available to the inmates on a larger scale in order to satisfy the existing needs.

A. Not only the medical supplies and installations; the problem of the sick inmates was by far more complicated.

They were not dressed; they were not fed. From the point of view of morale, living conditions were horrible, and they were sick and we had no means to treat them.

Q. You said in your affidavit that the SS did not choose these means but chose the method of extermination, gassing. Is that correct?

A. Yes.

DR. PELCKMANN: Thank you.

BY DR. SEIDL (Counsel for Defendant Duerrfeld):

Q. Witness, how long were you in Buchenwald?

A. Three months.

Q. When did you come there?

A. In January 1945.

Q. In No. 10 of your affidavit, you stated that the living conditions in Buchenwald in the last two years of the war were much better than in Monowitz?

A. Yes.

Q. Now, I ask you: How could you make such a comparison if you spent only three months in Buchenwald?

A. Because I saw the percentage statistics of Buchenwald when I arrived in Buchenwald; and the second possibility: a comparison of the French convoys that left at the same time and arrived, on the one hand, in Monowitz and, on the other hand, in Buchenwald, and stayed in the camp. And we could see the number of survivors for the same period.

Q. Witness, do you maintain your statement even if I put to you that we have affidavits of prisoners showing that in comparison to Buchenwald the camp Monowitz was a paradise?

MR. MINSKOFF: —

THE PRESIDENT: I think the fact that Counsel does or does not have affidavits that establish a contrary conception of the facts is not the proper basis of a cross-examination.

If there is an affidavit in evidence to that effect, and is before the Tribunal, it might be proper to call the attention of the witness if someone else had testified differently, and ask him if that refreshes his recollection, to correct his conclusion--but in the form the question is asked it is objectionable, and the objection is sustained.
BY DR. SEIDL:

Q. Witness, when did you start serving as a prisoners' doctor in Monowitz Camp IV?

A. What do you mean by "Camp IV Monowitz"? Do you mean, simply, Monowitz?

Q. I mean in the hospital of Camp IV, which is called Monowitz.

A. In October 1943.

Q. How many patients died in the hospital in Monowitz within the course of one year?

A. During one year about 10,000 dead...

Q. Died in the hospital...?

A. ...disappeared from the camp--10,000.

Q. Witness, I asked you how many patients died within one year in the hospital in Camp Monowitz.

A. Between 900 and 1,000.

Q. Do you know that in the concentration camp Auschwitz, as well as in the Birkenau camp, there were big hospitals to which patients were sent for treatment?

A. I was told so.

Q. My next question: Is it true that the distribution of barracks in the camp was exclusively an affair of the SS and that the senior inmates of the camp, and senior inmates of the blocks had a decisive influence on this distribution?

A. No; in the camp itself there were two very distinctive parts: the camp where lived the unhospitalized inmates, and

then the infirmary. They were two entirely different things, and it was impossible even for the camp physician to take some blocks outside the enclosure of the infirmary without the authorization of I.G. It was I.G. which authorized the occupation of the block to treat people suffering from scabies.

Q. You did not answer my question, Witness.

Was the distribution of the barracks available up to the SS, or to the I.G. Farben.

MR. MINSKOFF: As the Prosecution understood the question —

THE PRESIDENT: There is another question now. The last question is clearly proper. The former question will be treated as having been withdrawn.

Witness, do you understand the last question that Counsel asked you, with reference to the distribution being up to the SS or I.G. Or would you prefer to have it repeated?

WITNESS: Repeat it, please.

THE PRESIDENT: Will you, Counsel?

BY DR. SEIDL:

Q. The question was this: Was the distribution of the available barracks space in Camp IV—fifty or sixty barracks; that makes no difference—up to the SS, or was it up to I.G.?

A. The distribution itself, the disposal of barracks, was made by the SS—but the assignment of the number of barracks, on the one hand, to the infirmary and, on the other hand, to the entire camp was not made by the camp physician.

Q. Do you know that I.G. Farben had training courses for the prisoners to make welders, electricians, brick layers, locksmiths, and so forth, of them? Did you hear about that?

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A. Yes, there was a school for brick layers and there were other schools, but I have to add that that the inmates who were members of the schools died just as well as the other ones.

Q. Witness, do you seriously want to say that it was the intention of I. G. Farben to destroy the inmates? At first they gave them courses which lasted for months and cost considerable money and made skilled workers out of them.

A. No, not at all. I only say that the condition of work and life for the pupils of the brick layers school, for instance, were exactly the same as for the others. And if I. G. spent that much money it would have done better to keep the skilled workers in a good state of health who had already arrived in Monowitz.

Q. How often were you in the I. G. plant yourself, witness?

A. I think that my reply was badly translated.

Q. I shall repeat the question. How often were you yourself.....

A. 15 times.

Q. 15 times. Did you work on a detail in the I. G. plant?

A. No, no.

Q. What was the reason for your being there 15 times?

A. I was there several times to get glassware from the I. G., it is a chemist detail. I was there twice with all my comrades as male attendants of the infirmary where we got the steam engine for the disinfection of the infirmary which we had to pull with ropes just as the slaves of ancient Egypt used to tow the obelisks.

PRESIDENT: Please don't volunteer information of that character. If it becomes important, you will be asked about it. Just answer the question directly and simply and don't volunteer collateral matters of information.

DR. SEIDL: No further questions.

PRESIDENT: All right proceed, Counsel.

DR. SEIDL: I have finished, yes.

PRESIDENT: Did you complete your answer, witness?

R. E. WAITZ: No, I didn't complete it.

PRESIDENT: If you will keep the information in mind, go ahead and complete your answer.

R. E. WAITZ: I was also several times in the plant to fetch wounded or injured people or people who collapsed during their work and finally after the aerial bombings of the plant we went to pick up the wounded and the corpses.

BY DR. SEIDL:

Q. Witness, is it true that the SS had an express prohibition to the effect that prisoners who suffered an accident in the plant were not to be cared for by the plant doctors of I. G. and that the hospital of Camp IV, that is, the SS had to be informed?

A. I don't know what was forbidden but we always went ourselves. We always were informed by the kommando-stelle, the command office which was at the interior of the plant.

Q. And this was an SS command post?

A. There were the SS supervisors, but sometimes we were informed by a telephone from a work shop and not from a command post.

Q. And then you did whatever was necessary so that the injured prisoners who had suffered an accident at work was brought to the hospital?

A. Yes.

Q. Witness, there were 20 to 25 prisoner doctors in the hospital, is that right?

A. Yes, at the end, but not all of them worked as physicians; a certain number of them worked as mail attendants, as nurses.

Q. Yesterday a witness testified that a camp doctor, the SS doctor, sometimes came only every third day.

A. Frequently; that is correct.

Q. Then the prisoner doctors had a good degree of independence?

A. Independence within the infirmary; but no medical means.

Q. Yes, and the prisoner doctors had to decide whether a patient was to be taken into the hospital as an in-patient or whether he would be treated as an out-patient?

A. Oh, no. The prisoner doctor in the invalid service in the evening could only give a very important form, a physician certificate, and the sick man in the morning did not report for work but reported to the infirmary and then the camp physician confirmed it. When the camp physician wasn't there himself, then it was the Camp Eldest who could say whether he would be admitted, but within the limits of the beds which the camp physician authorized to be occupied by sick people.

Q. And then this Camp Eldest was an inmate?

A. Yes.

DR. SKIDL: No further questions.

PRESIDENT: Is there any further cross-examination?
Then any direct?

MR. MINSKOFF: There is no direct, your Honor.

PRESIDENT: The witness is excused and the Marshall will escort him from the box. Call your next witness.

MR. MINSKOFF: Kai Feinberg, Norwegian, please.

PRESIDENT: Just a minute, the Tribunal will be

advised as to the form of the oath to be administered to a Norwegian witness. What do you know, Mr. Prosecutor?

MR. SPRECHER: I am informed by the defense counsel that the general form of oaths is more or less the same as the German form of oath.

MR. MINSKOFF: The witness' affidavit, if it please the court, is in Document Book 75. It is Prosecution Exhibit 1460. It appears at page 40 of the English.

PRESIDENT: Bring in the witness. The witness will remain standing for the purpose of being sworn. Raise his right hand and say "I" and state his name.

KAI FEINBERG, a witness, took the stand and testified as follows:

THE WITNESS: Kai Feinberg

PRESIDENT: And now repeat after me:

I swear by God, the Almighty and Omniscient that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT: The witness may be seated. Has this witness been instructed with reference to the translation problems and the use of these small lights?

MR. MINSKOFF: Yes.

THE PRESIDENT: The counsel for the prosecution may proceed.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q Mr. Feinberg, what is your full name?

A Kai Feinberg.

Q And where do you reside?

A In Oslo.

Q With respect to your affidavit which is prosecution's exhibit 1460, are there any corrections or additions you wish to make?

A No.

Q Mr. Feinberg, are you now, or were you ever a member of the Communist Party?

A No.

MR. MINSKOFF: No further questions by the Prosecution.

PRESIDENT: The defense may cross examine.

DR. SEIDL: Seidl for Duerrfeld.

CROSS EXAMINATION

BY DR. SEIDL:

Q Witness, what color was the triangle which you wore as insignia as a prisoner?

A The color was yellow and red.

Q When did you come to Camp IV or Monowitz, as it also was called?

A At the beginning of December 1942.

Q You say in your affidavit that together with 300 others you had to march 4 or 5 hours to the Buna Plant?

A Yes.

Q Now, Witness, behind you there is a big chart. Please look at this chart and then tell me what the route was that you took during these four or five hours to get to the Camp Monowitz, but please give your answer into the microphone because otherwise your answer will not appear in the record.

A I do not have to look at the map to tell you how we came to the camp. I know that we marched four or five hours. First we went to the camp, then back again, so that we could be deloused, and then we went back again and in this way it took about four or five hours from Auschwitz to Buna.

Q Is it true that the normal trip from Auschwitz to Buna is about 8 kilometers?

A Yes, I assume so -- I never measured it.

Q What work did you yourself do in the IG plant?

A The first three weeks I was in the camp I was in quarantine. After these three weeks I was assigned to Detail IV in Buna. I had to carry cement and iron bars.

Q When did you leave the camp for the IG plant -- at what time in the morning?

A I cannot give you the exact time, I had no watch. It was about dawn.

Q But in your affidavit you said 5:15?

A Yes, it was.

Q Did you seriously mean to say that dawn is at 5:15 in December?

A I believe the defense counsel misunderstood me. We got up at 5:15.

Q I do not believe that I misunderstood you. Your affidavit says that you got up at 4:30.

A In order to clear up this misunderstanding I should like to say that I was in Auschwitz over two years and probably I calculated the time according to German summertime, and I cannot remember the first three months in Monowitz so well. I cannot say exactly when I got up and when we left for work.

Q In any case, you marched to the plant after daylight set in?

A We had to do that because at the time of which I am speaking there were no guards around the camp; therefore, the guards did not dare go out with us when it was dark.

Q In December '42 how many prisoners were there in Camp IV which were transferred there from Auschwitz?

A I should like to point out that I was a common prisoner all the time. I had no contact with the office or anything like that, and I cannot give you any information on this subject, and I had other things to think of besides how many prisoners there were in the camp.

Q How many barracks were finished at this time in Camp IV?

A I assume about 20 or 25.

Q 20 or 25 barracks in December 1942?

A No, January '43.

Q How long were you in the hospital of Camp IV?

A About three weeks.

Q Where did you go then?

A I had pneumonia, and I had just got over my fever and immediately I was sent back to work because there were so many prisoners who had died in the camp that many vacant places in the camp had to be filled; therefore, everyone who was in the hospital, even if they had not quite recuperated had to be sent back to work.

Q And when did you come back to Auschwitz?

A About April 1943.

Q And how long were you in Auschwitz?

A Until the Russians liberated us on the 27th of January 1945.

Q What did you have to do in Auschwitz?

A I had all kinds of work to do. I was a common prisoner all the time and was treated as such.

Q When you say that in February 1943 the prisoners had to march past a commission, when was that, in the morning or in the evening?

A In the morning.

Q And what was done?

A All the work columns in rows of five marched through the gate, and every row had to be three steps away from the next one. By the gate were a number of high German officers and a number of civilians, and the weakest among us were selected. There were five Norwegians in my row and three of them were picked out. They were put to one side. There were probably about 800 people altogether, as I learned later, and when I came back to the camp these people were gone, and I never heard anything from them and never saw them again.

Q While you were marching out through the gate the camp band was playing, is that right?

A That is possible -- No, that is impossible, there was no band at that time.

Q Can you give me any names of the officers or civilians who in February in 1943, as you asserted, stood at the gate to the camp?

A I should like to point out once more that I was a common prisoner and as such I did not know either the officers or the civilians.

Q In the Concentration Camp Auschwitz you stayed during the entire subsequent period?

A Yes.

Q Is it true that prisoners in Camp IV in Monowitz just like yourself were returned to Auschwitz?

A That happened very rarely.

Q You were in the hospital for some time in Auschwitz, is that right?

A Yes.

Q Was this a modern hospital, or was it a small infirmary -- how many beds were there there?

A Are you talking about Monowitz or Auschwitz?

Q Auschwitz.

A In Auschwitz there were six big blocks which were for the hospital, and, of course, they were overcrowded.

DR. SEIDL: No further questions, Mr. President.

THE PRESIDENT: Any further cross examination of this witness?
Since none is indicated is there any re-direct examination?

MR. MINSKOFF: There's no re-direct.

THE PRESIDENT: Then the witness is excused and the Marshal will
escort him from the box.

MR. MINSKOFF: Mr. Davison is the prosecution's next witness.

THE PRESIDENT: The Marshal will bring in Mr. Davison on his return,
please. What's the nationality of this witness, please?

MR. MINSKOFF: British. His affidavit is also in Document Book 74,
it appears as Exhibit 1464 on page 63 of the English and page 83 of the
German.

FREDERICK DAVISON, a witness, took the stand and testified as follows:

THE PRESIDENT: Mr. Witness, will you raise your right hand to be
sworn as a witness? I shall state the oath and at the end you may say
"I do". Do you solemnly swear that the testimony that you are about to
give in this cause shall be the truth, the whole truth and nothing but
the truth, so help you God?

THE WITNESS: I do.

THE PRESIDENT: You may be seated.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q What's your full name, Mr. Davison?

A Frederick Davison.

Q And where do you reside?

A In 13 Saxon Crescent, Sunderland England.

Q Do you have any corrections or additions to the affidavit which
is now Prosecution Exhibit 1454 in evidence?

A No, my affidavit stands as it is.

Q Mr. Davison, were you ever a member of the Communist Party?

A No, never.

MR. MINSKOFF: No further questions for the Prosecution.

CROSS EXAMINATION

BY DR. HOFFMANN:

Q Witness—

THE PRESIDENT: Just a moment, please. May I inquire, Mr. Witness, were you admonished about the manner of testifying here because of translation problems before you came in?

THE WITNESS: No, I don't think so.

THE PRESIDENT: It's necessary that your testimony be translated into German.

THE WITNESS: I understand.

THE PRESIDENT: And for that reason it's important that you speak somewhat slowly and also before you are two signal lights. Do you know about them?

THE WITNESS: No, I don't.

THE PRESIDENT: The yellow light, when it flashes like that (indicating indicates that you are speaking too rapidly and is a request to go more slowly. If, perchance, the red light is flashed it means for you to stop completely until the Tribunal tells you to resume speaking. Just one thing further; please do not feel called upon to amplify your answers or to volunteer information. Answer the questions as directly and simply as possible and if counsel wishes further information, additional questions will be asked. If we may have your co-operation it may help to expedite your testimony.

THE WITNESS: Yes, sir.

BY MR. HOFFMANN:

Q Witness, in your affidavit you say: "The prisoners were forced to carry 100 pound sacks of cement." Did you see that yourself?

A Yes, I did.

Q Would you please describe to me where that happened?

A At the bottom of E Street in the Auschwitz Camp.

Q Can you describe the work?

A They were unloading trucks from a railway line there.

Q Did the cement come by rail or on trucks?

A By rail and by trucks.

Q If the cement came by rail what happened then?

A The inmates of Auschwitz had to unload them and carry them to the place where they were needed for work.

Q And how far was that that the prisoners had to carry the cement?

A Sometimes 50 yards or maybe more.

Q Was it not so that from the railroad stop to the place where the cement was taken was only ten or fifteen steps?

A No. Well, 50 yards is somewhere about 50 to 100 steps, isn't it?

Q How long did it take a prisoner to go this distance?

A Maybe about a quarter to half an hour, perhaps.

Q Did they ever have a chance to rest on the way?

A No.

Q And you say, witness, that that was the customary method by which cement was carried from the railroad to its destination?

A Yes.

Q There was no other method of transportation you say?

A I never say any other method of transportation.

Q Witness, you also say: "I saw prisoners being beaten to death with iron bars and murdered in the factory." How often did you see such an incident?

A Four to five times.

Q When was that, witness?

A About December 1943, during the winter, and again in about March of 1944 and again in about October, November and December in 1944.

Q Witness, who killed these prisoners when you were present?

A On three occasions it was the SS. On the other it was the German personnel, Maisters.

Q You said four times you saw such murders; is that right?

A In my affidavit, it says four or five times.

Q Very well, then. You say three times it was the SS and twice it

wasn't the SS?

A That's correct.

Q How do you know that on these two occasions when it was not the SS but that it was the Moisters?

A I know German Moisters from the SS.

Q Did you believe that these were I.G. employees or could they have been working for other firms?

A I was working for I.G. Farben. Some of these Moisters were also working for same firm; so if I was working for I. G. they must have been doing the same.

Q But they were not necessarily employed by I.G.? They could have been employed by some other firm?

A Their orders, that is, my own Moister's orders were all headed "I.G. Farben."

Q Witness, you may not know that there were many other firms working in this area that did not belong to I.G. Farben.

A I am quite sure.

Q Then, I ask you whether these Moisters could not have been people who were not employed by I.G. and were merely working for I.G. in general?

A If they were working for I.G. Farben I took them to be I.G. Farben officials as they come under the same jurisdiction as to what I did.

Q Witness, do you know the names of these people you committed these murders?

A I do not.

Q Witness, did you inquire their names?

A It wasn't healthy to inquire about anything in that factory.

Q Who was present at these murders aside from yourself?

A Quite a few of the inmates from Lager 4.

Q Did you work with these prisoners?

A I did.

Q Was it not forbidden for prisoners of war to talk to the prisoners and to be together with them?

A It was.

Q Well, how did it happen that this prohibition was not kept?

A It was done while the SS and the Gestapo weren't watching.

Q Witness, I should like to show you four photographs now which I offer for identification as Ambros Document 9, 10, 11 and 12. From these photos you can see the work process of unloading cement and I want to ask you whether this is how the work was done? Excuse me, Mr. President. I must correct myself. The Secretary General has just informed me that the numbers for the exhibits should be 10, 11, 12 and 13.

THE PRESIDENT: How many photographs are there?

DR. HOFFMANN: Four.

THE PRESIDENT: Then the record will show they are marked for identification only as Ambros Exhibits 10, 11, 12 and 13. They may be passed to the witness.

BY DR. HOFFMANN:

Q Witness, if I may tell you anything about these pictures, you can see there the railroad car standing next to a cement silo. You can see the sacks being cut open and being emptied into the opening below through a chute. You can also see in the car on the right which apparently has gone too far and is not directly under the opening.

MR. MINSKOFF: The Prosecution moves at this time to strike the record. The description of the record is not in evidence. It's merely description. We think to put into evidence before the Court a fact that may or may not be so and there's no proof this picture is accurate or inaccurate.

THE PRESIDENT: That's true and yet it isn't improper for counsel to refresh the recollection of the witness or direct his attention to what may or may not appear on the photographs. Counsel may complete his question and the witness can then make his own answer in his own way as to what he conceives the facts to be.

BY DR. HOFFMANN:

Q You also see a man carrying a sack, apparently a sack of cement,

and when he puts it down everything else is automatic. Is that the process which you observed?

A I have never seen this process. All of the time I was in Auschwitz the only process I have seen is as I have stated before.

THE PRESIDENT: Counsel, this would be an appropriate time to recess for lunch but before we do there's a matter we should like to direct to the attention of counsel for the prosecution; if the Prosecution pleases, the Tribunal would like to have, at your convenience, a list of the witnesses yet to be cross examined under Count I of the indictment, together with the Exhibit Numbers and Book reference page, concerning the authors of these affidavits -- if you understand what I mean?

MR. SPRECHER: Yes, Mr. President, and I will check. I think for the most part they are already on the second memorandum and concerning that point --

THE PRESIDENT: If we could have a revised list and I want you to understand it isn't for the record and it can be informal. A pencilled memorandum will serve our purpose and if we may have the names of the affiants, the exhibit numbers, the book and page references as to the witnesses whose affidavits have been introduced in support of Count I of the indictment so that we can --

MR. SPRECHER: Or yet have not been cross-examined or waived.

THE PRESIDENT: Or waived. The Tribunal will now rise until one thirty.

(A recess was taken.)

AFTERNOON SESSION

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Continue with the cross examination of the witness, please.

FREDERICK DAVISON (continued)

CROSS EXAMINATION (resumed)

BY DR. HOFFMANN:

Q. Witness, may I ask you again from what date until what date you stayed at (the camp Monowitz, or rather in Auschwitz?)

A. I was there from October in 1943 to approximately 21 January 1945.

Q. Witness, do you still remember the photos which I showed you before the recess?

A. I do.

Q. Did you ever see this factory or can you remember it?

A. These factories look so much alike that it's quite possible to be mistaken in the photograph. It may be another factory but it can also be Auschwitz.

MR. MINSKOFF: It might be helpful if it's pointed out that of the four photographs offered, I think two are duplicates so that there are only two different pictures being shown and might be so marked.

DR. HOFFMANN: That's true, Mr. President.

THE PRESIDENT: Very well. Pardon me, counsel, if they are duplicates will it not be confusing to have them given separate numbers? Should you not just have two numbers instead of four? If I remember you designated them as 10, 11, 12, and 13. of the defendant Ambros. Perhaps they just should be 10 and 11.

DR. HOFFMANN: Yes, Mr. President.

THE PRESIDENT: Very well, will the Secretary General make that correction please? You may go ahead.

BY DR. HOFFMANN:

Q. Witness, you were speaking about the murders which you saw committed on inmates and you said that three of those unfortunate ones were killed by SS men. Were the SS men in the I.G. plant in order to supervise the inmates?

A. Yes.

Q. How many such SS guards approximately were in the I.G. plant every day?

A. I do not know.

Q. Did you frequently see such SS guards?

A. Yes, I did.

Q. In that case, witness, according to your opinion, the inmates were also under the guard of the SS at their place of work even outside the camp; is that true?

A. That's true.

Q. Thank you. Witness, you went on to say, as far as you could judge, I would say that a relatively healthy inmate who arrived in October could not hope to survive to the end of the winter. If I now tell you, witness, that the prosecution has submitted here a sick-book which is included in Book 76, from which it becomes apparent that your statement is not correct. Would it be true if I assume that your statement is merely an assumption on your part?

THE PRESIDENT: The objection to that question will be sustained. The witness is not required to say that his statement is incorrect. You may call his attention to the book and ask him if that would modify the statement that he did make to the Tribunal.

DR. HOFFMANN: That's how I wanted to ask you, witness, Would you limit your statement if I put these facts to you?

MR. SPRECHER: Mr. President, what can we do? The

Prosecution certainly may think the book does not show what the counsel has just stated. I think he is assuming a fact that is not in evidence. He is making a very general statement without any of the qualifications which I think the evidence would warrant.

THE PRESIDENT: That, perhaps is true, We take it that nobody is bound by the disclosures contained in this book. There's just some evidence that the book was kept. If you wish to ask — if counsel wishes to ask him if there was such a book and that book shows certain things and whether or not that would change his mind or answer the question. That's what the Tribunal had in mind saying. It was rather awkwardly stated. Perhaps counsel for the defense will get the point as to the observation of the Tribunal now.

BY DR. HOFFMANN:

Q. Witness, if I was to tell you that many inmates appeared here as witnesses and that they were in Auschwitz for a longer period than you state, would you change your testimony?

A. No, I would not. There were many who were in longer, admitted, But they have been used to this tough life for years before. The new ones that came in were not used to the hard conditions and therefore they could not survive it.

Q. Would you also say, witness, that according to your observations newcomers who were not used to physical labor and formerly worked on desk jobs had particularly difficulties in changing over to this new life and therefore suffered greater losses?

A. Yes, They would have more hardships.

Q. Witness, do you know whether I.G. Farben could select the quality of the inmates whom they were to employ?

A. I do not know how they got the inmates.

Q. Thank you. You went on to say in your affidavit and I quote: "The Kapos told me that these who were considered to be unfit for work were told that they would be transferred. In reality, however, that meant the gas chamber." Am I correct in understanding your testimony thus that the Kapos of whom you were speaking did not tell of the inmates to whom they spoke the truth about their future fate?

A. They told them they were going to be transferred. But they knew that transfer meant that they would be transferred to such places as the gas chamber.

Q. Witness, another witness who testified before you has stated that one knew in Auschwitz what such a selection meant but that officially there was no talk about it. Do you want to confirm that statement here?

A. As in my affidavit I say that everyone in the factory know of the gas chambers and everybody used to talk about it.

Q. But wasn't it dangerous to talk about these matters, witness?

A. If the Gestapo or SS were around, certainly.

Q. Now, if the Meisters of the I.G. were around was there any talk about it then?

A. Yes, there was.

Q. In other words, it wasn't dangerous to talk to the Meisters of the I.G. Farben?

A. Not unless the Gestapo or the SS soldiers were around. Then it was dangerous. They wouldn't talk to you then.

Q. Did you gain the impression as if the foremen or Meisters of the I.G. were also afraid of the SS and Gestapo?

A. Yes, they were.

Q. Then they were under a certain pressure, were they not?

A. I don't know about that.

Q. Witness, you go on to say that the Kapos were at times ordinary inmates who won the privilege of being a Kapo by work in the crematorium. Would you please tell me which crematorium you are talking of?

A. The crematorium in Auschwitz or in Birkenau.

Q Witness, do you mean to say that these Kapos personally participated in the gassing at Auschwitz, and did they do auxiliary service in order to carry out such gassing?

A That is what the Kapo told me, and he had no reason to lie to me.

Q Did they tell you how this gassing in Auschwitz was carried out?

A No, the gassing was enough for me, I didn't want to hear any more about it.

Q You don't think that these Kapos just exaggerated when they talked to you about these matters?

A They may have done it, and perhaps not, but that is as I heard it and that is in my affidavit.

DR. HOFFMANN: I have no further questions, thank you.

THE PRESIDENT: Is there any further cross-examination of this witness?

(No response)

Since none is being requested, is there any redirect?

MR. MINSKOFF: No redirect.

JUDGE MORRIS: I have a question.

BY JUDGE MORRIS:

Q Mr. Witness, where did you workers eat your noon meal; at the camp or at the plant?

A At the plant.

Q Was that served from kitchens in the plant, or where did the food come from, do you know?

A The food came from the kitchen in the plant, and it was carried down to us in buckets.

Q So you were furnished one meal, the midday meal, at the plant?

A That is quite correct.

Q And how about your morning and evening meal, where was that furnished?

A The morning meal was at the Lager and so was the evening meal.

JUDGE MORRIS: Thank you.

THE PRESIDENT: Now, is there any further examination of this witness requested?

MR. MINSKOFF: Not by the Prosecution, Sir.

THE PRESIDENT: Then the witness is excused and the Marshal will escort him from the box.

THE WITNESS: Thank you, Sir.

(Witness excused)

MR. SPRECHER: Dr. Seidl and Dr. Drischol, who have been handling, as I understand it, principally, the cross-examination of these witnesses for the Defense, have both informed me that with respect to nine of the British witnesses the Defense will waive cross-examination.

THE PRESIDENT: Perhaps, in the interests of a complete record, you had better state their names on the record, if you are in a position to do it.

MR. SPRECHER: I will state them alphabetically, with your permission.

THE PRESIDENT: Very well.

MR. SPRECHER: John Adkins; that is Exhibit 1475, NI-11699.

Douglas Frost; that is Exhibit 1480, NI-11692.

Arthur Greenham; Exhibit 1453, NI-11705.

John Pascoe, Exhibit 1473, NI-11701.

Kenneth Lovell, Exhibit 1467, NI-11702.

Robert Robertson, Exhibit 1487, NI-11700.

Albert Seal, Exhibit 1466, NI-11708.

Ian Spencer, Exhibit 1486, NI-11707.

Frederick Woolley -- that affidavit has not been introduced yet; it is in Book 78, and its number is NI-11706.

With respect to the other British witnesses who are already in Nuernberg, there will be cross-examination.

THE PRESIDENT: Then the Tribunal understands that as to the witnesses named by the Prosecution for the record now, and with respect to the affidavits designated in the record simultaneously, the Defense has waived cross-examination and the witnesses need not be produced by the Prosecution.

Call your next witness.

Just a moment please.

DR. SKIDL (Counsel for the defendant Dr. Duerrfeld): Your Honor, we are in full agreement with the list which Mr. Sprecher just read to the Tribunal. Let me just add a very few words as to our reasons for waiving the cross-examination of these witnesses.

In compliance with the wishes of the Tribunal to expedite these proceedings as much as possible, we read through the affidavits of these British PW's. In reading these affidavits we found that the content of all these affidavits is very much the same and that all the affiants speak about similar subjects. In view of the fact that a number of the witnesses have already been heard and that a further number of witnesses are going to be examined here, we don't deem it necessary that all such witnesses be cross-examined on the very same subjects, in particular since other inmates will appear before the Tribunal here, who will also be examined by the Defense in connection with the same questions. However, we do start from the assumption that

our waiver will not be interpreted as an admission and that, as before, the Defense will have the right to submit evidence in favor of the defendants whenever their case in chief comes up.

THE PRESIDENT: The Tribunal appreciates the cooperation of counsel and appreciates the fact that counsel for the Defense has waived the cross-examination of these witnesses. We wish to make it clear however, that we are not foreclosing your right to cross-examination. We take it that your waiver is free and voluntary and with full knowledge of the contents of the affidavits. Counsel for the Defense is entirely correct that the defendants are not bound by this testimony, nor will it be treated in any respect as any limitation whatever upon the privilege of the Defense, at the proper time, to make its own showing as to the same facts or any other facts that are deemed pertinent to the Defense in this case.

The Prosecution may call its next witness.

MR. MINSKOFF: Mr. Ferris, of British nationality.

The affidavit of Mr. Ferris, if it please the Court, appears in Book 75 as Prosecution's Exhibit 1463, on page 56 of the English and page 78 of the German.

ROBERT WILLIAM FERRIS, a witness, took the stand and testified as follows:

THE PRESIDENT: Mr. Witness, will you please remain standing for the purpose of being sworn?

Now raise your right hand. I shall administer the oath after which, in accordance with the custom of your country, you may say "I swear".

Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I swear.

THE PRESIDENT: You may be seated.

May I inquire further, Mr. Witness, if the problems of translation have been explained to you before you came on the witness stand?

THE WITNESS: Yes, it has.

THE PRESIDENT: Do you understand the use of the two signal lights in front of you?

THE WITNESS: Yes.

THE PRESIDENT: Very well; the witness is with the Prosecution.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q What is your full name, Mr. Ferris?

A Robert William Ferris.

Q And where do you reside?

A Lower Edmonton, London.

Q With respect to your affidavit, which is Prosecution Exhibit 1463, are there any corrections or additions you wish to make at this time?

A Yes, there is one correction. It says, in paragraph 3 of the affidavit, that when I saw the thirty dead inmates it was in the Administration Building, but it was in the Kassel Haus, on A Street, and they were carried away by the Haeftlinge, under SS escort.

Q Is a Kassel House a sort of boiler house?

A Boiler house, that is quite right.

Q Are there any other corrections or additions?

A No.

Q Mr. Ferris, were you ever a member of the Communist Party?

A No.

MR. MINSKOFF: That is all for the Prosecution.

THE PRESIDENT: The Defense may cross-examine the witness.

BY DR. TRABANDT (Counsel for the defendant Dr. Duerrfeld):

Q Mr. Ferris, did you arrive with the first transport of British prisoners of war who were intended to work at the Buna work in Auschwitz?

A Yes.

Q What is your profession, Mr. Ferris?

A Plumber.

Q You say that you were active in the servicing of the pipe line for petroleum. Am I to understand that you helped to erect this pipe line?

A Yes, that is correct.

Q Throughout the year and a quarter you stayed at Auschwitz, did you always do that work?

A Yes.

Q Was it a work detail composed of a number of workers, or was there only one man working there with a German foreman, or how did you go about that work?

A There were a number of workers, working under a German foreman.

Q Were they British friends of yours?

A Yes.

Q Only British people, or were they mixed with the other workers?

A They were mixed with the other workers.

Q How many people worked on that detail?

A About seventy.

Q Now, Mr. Ferris, were you always working at one place, or did you gradually go through various departments

of the plant when carrying out your work?

A We went all over the factory.

Q. How am I to understand that? Did you slowly advance from one place to another, or did you one day work at this end of the factory and another at another end of the factory?

A. One day, one end.....and another day another end. We had to carry the pipes all the way through the factory.

Q. Do you know the word "Freizeitakkord"? This is piece time work.

A. Piece time work? They were all helping to build the factory and the factory wasn't used for piece time methods.

Q. I am going to express myself differently, Mr. Ferris. Was it so that one morning you were assigned to a certain job and was it true that after you finished that job you could go back into the camp?

A. Not in our party.

Q. Was that true in the case of your other British friends?

A. It was true in the best part of them but some of them were allowed to go back earlier.

Q. Could you do any sports in your camp?

A. Yes, occasionally, if we had time.

Q. And did you have time to do that during the week?

A. Not during the week, no.

Q. When did you start work, Mr. Ferris?

A. (First part inaudible) There was reveille at quarter past four, or quarter past five, and we started work at quarter to six.

Q. Did you start at quarter to six in the winter?

A. We started at quarter to six in the winter, it

was going into the winter when we arrived.

Q. I don't think the translation was correct. In the winter, you started at quarter to six, didn't you?

A. We started at quarter to six in the winter and it was towards the summer when it eased off.

Q. And how about work outside the camp?

A. Work outside the camp?

Q. Did you work outside a room? Did you work out in the open air?

A. Yes, out in the open air.

Q. But you couldn't see anything in the winter at quarter to six, could you? It was still very dark, wasn't it?

A. It was very dark, yes, but we could see enough to carry the pipes through the factory.

Q. As you said before, you worked at different ends of the factory, didn't you?

A. That is correct.

Q. And then you could observe many other work details during the work, couldn't you?

A. We did.

Q. What did prisoners' work details do?

A. The Haeftlinge and other inmates, those all more or less labored in the factory, but the Haeftlinge started later than we did.

Q. Now, whenever you worked at one end of the factory with your detail, did you ever see prisoners' work detail starting to work next to you, even if they did start a little later?

A. Yes, we could see them.

Q. What was their job?

A. Some of them were in work in work shops, others

would work in cement hauling, and, well, they were just more or less laboring in the factory.

Q. We didn't quite understand each other. Naturally the inmates worked in the factory. But what was their job in there? What did they produce? Did they produce tools, or what? What was their job?

A. They were digging roads, repairing roads all through the factory; they hauled cement, doing all the work under the German foreman that was required of them, and that was all various jobs.

Q. I see. And in your affidavit you say that inmates feel down dead daily?

A. That is correct.

Q. During that work, while you were repairing pipelines, did you really see inmates fall down dead? Every day?

A. I saw inmates.....

Q. Every day?

A. Yes, every day.

Q. Under paragraph 3 of your affidavit, you say, in the case of these truck convoys of which you spoke, and I quote: "We knew that these inmates went to the gas chambers." How did you know that?

A. They told us. Everybody in the factory knew. It was general knowledge that they were going to the gas chambers. The German civilian workers knew that.

Q. Did you at that time already know that large work details were transferred from Camp IV into other labor camps?

A. No, we did not know that.

Q. And who told you that these truck transports were sent off to the gas chambers?

A. It was general knowledge. The German civilians knew it. The Haeftlinge knew it. And everybody who was working in the factory knew it.

Q. Do you speak German?

A. I speak a little. But if I am talking to a Chinaman I could still make him understand me, couldn't I?

Q. You go on to say, I quote, "The inmates who fell unconscious were lying around the plant for many hours at times." Did you know that the Farben employees were prohibited to care for these people? Do you know that certain SS commandos were ordered to take care of them?

A. I did not know that. It would have been only human decency to care for them, isn't it?

Q. Yes, that is true. But, did you know that this human decency had to be paid for dearly by these Farben people who helped the inmates? Didn't they tell you that?

MR. HIRSHOFF: The prosecution objects to the attorney testifying instead of asking a question.

THE PRESIDENT: That is a question. The objection is overruled.

A. Repeat the question, please.

Q. I asked you whether you, witness, didn't hear anywhere that the Farben people whenever they helped such inmates.....and it sometimes did happen.....had to pay dearly for such assistance? I thought perhaps you heard about that because there was so much general knowledge going on around this factory and because so much has been talked about.

A. Yes, there is a lot of general knowledge, but when they collapse it certainly is not forbidden to kick them, for instance, when they are down, is it? I mean, they were not compelled to do that.

Q. Certainly not.

A. Well, they did.

Q. Mr. Witness, I didn't ask you for that, witness. I asked you whether you knew that it was dangerous to help these people. You can answer that.

A. Yes, I suppose it was dangerous to help them.

Q. You also saw how civilians were beating these inmates. That is what you say in your affidavit.

A. That is correct.

Q. Were you close by? Did you see it from a short distance?

A. I saw it from a short distance, yes.

Q. Do you know what a Kapo is? Do you?

A. Yes, I know what a Kapo is.

Q. And weren't these people Kapos? Were they civilians?

A. They were civilians.

Q. Do you know your friend Greenham?

A. Yes, I know him.

Q. And your friend Greenham throughout this year and a quarter never saw that one of these civilians was beating any one of the inmates?

MR. MINSKOFF: I object.

PRESIDENT: Sustained.

A. My friend.....

THE PRESIDENT: Wait a minute, please, Mr. Witness. That question is out. Wait for another question.

Q. You go on to speak of Russian PW's. That is in paragraph 6 of your affidavit, Mr. Ferris. Did you ever see Russian soldiers?

A. I did not say soldiers.

Q. Well, prisoners-of-war are soldiers, aren't they?

A. Not necessarily. When the Russians advanced, then the Germans advanced to Russia, they took whole villages of Russians to work in their plants and they also were prisoners of-war, but they were not soldiers.

Q. That is what I wanted to hear from you. They were not Russian soldiers, were they?

A. No. But there were Russians who were in the Haeftlinge, who told me they were soldiers and also other Haeftlinge informed us they were soldiers.

Q. Russians who told you that they were soldiers?

A. Russians who told us they were soldiers.

Q. Did they tell you that? Do you speak Russian, Mr. Ferris?

A. No, but I can still make myself understood. I mean, the word "soldat" and anyone pointing to himself, that is international.

Q. That is correct. You go on to say that you saw Russian girls swinging hammers?

A. That is correct.

Q. What kind of a job is that, swinging hammers? Isn't that a sport?

A It's a sport for men, but not for women.

Q Yes, but every kind of work has to have a reason. If you just swing a hammer about, that can't have any purpose.

A But they were working on the roads there. They were swinging sledge hammers, actually working on the roads there. Driving chisels into the ground.

Q You go on to say, I quote:

"The first jobs to which the British prisoners of war were assigned were construction work."

You said at the very beginning, that throughout your entire period there, you were installing pipe lines, isn't that true?

A That's still construction.

Q Yes. Do you understand that by construction work?

A Yes.

Q Under paragraph 7 of your affidavit though you say the British prisoners-of-war were later assigned to the production work in the chemical plant of I.G. Farben. That certainly isn't construction work. But you did carry out your construction work until the end of your stay at Auschwitz, isn't that true?

A Yes, I did. I did not say that we were all on construction.

Q You are saying that at a later day other of your comrades were working producing petrol. Is that true?

A That is true.

Q Did you ever see that petrol was transported away from the plant in which you worked? I mean, the ready petrol.

A No, I didn't.

Q What would you say if I told you that the construction work never reached a point where gasoline or petrol could actually be produced in that plant? Can that be true?

A It cannot be true because I remember them opening it for gasoline and petrol.

THE PRESIDENT: Mr. Marshal, will you ascertain if that noise is

DR. TRABANDT: May I pause for a minute, Mr. President?

THE PRESIDENT: You may go ahead, counsel. Go ahead, counsel. Go ahead. If the noise becomes too much for the translation staff to follow the testimony, kindly give us a signal.

INTERPRETER: Yes, Your Honor.

BY DR. TRABANDT:

Q Mr. Ferris, you said that you were only a short distance away and you saw how civilians were beating inmates, is that true?

A I saw the Farben civilians ill-treating inmates, yes.

Q Why didn't you do anything about it? That was unfair, wasn't it, this beating of weak people?

A What could I do?

Q What could have happened to you if you interfered?

A What could have happened?

THE PRESIDENT: I think we'll have to suspend momentarily until we see whether or not we can eliminate the disturbing noise.

Counsel, you may proceed. If the noise starts again, you will please stop.

BY DR. TRABANDT:

Q Mr. Ferris, at the end of your affidavit, you say that you had never heard of Monowitz?

A That is quite true. We only knew it as the concentration camp. I never heard the actual title of it.

Q You say that this concentration camp of which you knew, and to which the inmates of I.G. went, was about a mile and a half away from your camp. Is that true?

A Excuse me. I did not say that. I said approximately half a mile.

Q I beg your pardon, Your Honor. In my German copy, there's a misprint.

THE PRESIDENT: Very well.

DR. TRABANDT: Well, that is clear now.

I have no further questions now, Your Honor.

THE PRESIDENT: Any further cross examination?

BY DR. DRISCHEL (Defense Counsel for the defendant Ambros):

Q Your Honor, I only have one question as to the credibility of the witness.

Witness....

A Yes.

Q You mentioned, under paragraph 9 of your affidavit, that Himmler was there while you were in the camp, but that you didn't see him.

A I didn't see him, no. In the factory.

Q Well, then, how do you know he was there?

A I was informed he was there by several of the German civilians there and also by the Haeftlinge.

Q And that was to have happened in November, 1943?

A Approximately round about November.

Q Now, if I put to you, witness, that Himmler was not there in the year of 1943, would you then admit that you could have made an error?

A Why no, I would not admit it because, after all, how do you know he was not there?

THE PRESIDENT: Counsel, I think the witness has said it was only what he had heard, anyway, so his source of information could have been correct or incorrect.

DR. DRISCHEL: That is sufficient, Your Honor.

THE PRESIDENT: Any further cross examination?

BY DR. DIX (Defense Counsel for the defendant Schneider):

Q Witness, with whom of the Germans did you speak and in what manner did you speak to them about the gasings? What did they say and how did they say it was carried out?

A What did they say? They made excuses for it.

Q I want to know what the Germans said about it?

A The Farben officials - they said that when they got unfit to work, they outlived their usefulness and so that, therefore, it was one way out for them.

Q Did they only say that to you, or did they say that to a bigger circle of people also?

A They said that to a bigger circle of people also. It was general knowledge in the factory. I have already said that.

Q Then, witness, how can you explain that one of the witnesses yesterday testified that, officially, one could not talk about that? How do you explain?

MR. MINSKOFF: - - - -

THE PRESIDENT: Objection is sustained.

DR. DIX: I only want to say that this is a question.

THE PRESIDENT: Not a proper question. The witness is not required to explain the testimony of any other witness. He is required to tell his own story, if he is asked about it. You may say to him, if you wish, that someone has testified about some other facts and whether that refreshes his recollection. He may add to his own testimony, but he is not required to defend his testimony against the testimony of any other witness.

BY DR. DIX:

Q Then I shall repeat the question in another form.

One of the witnesses testified here that, officially, one was not allowed to talk about these matters. Do you have anything to add to the testimony now?

A Certainly. There is a lot you do unofficially that you're not supposed to do officially.

Q But is it not true that if an I. G. official talked to a prisoner-of-war, this is a private conversation which maybe dangerous? Don't you think I am right?

A But when they were working with us every day, of course they spoke.

Q Yes, but I.G. officials didn't work with you, did they? Officials are the higher people, aren't they?

A Official? A bus man in London is a official of the corporation. An official is anybody that works for anything, is he not?

Q Well, then, the translation can't be correct. What kind of officials were they who told you about these things?

A The German civilians - the Farben Meisters there.

Q And they all told you that, among a larger circle of people and you still stick to that, do you?

A I certainly do.

Q Thank you.

THE PRESIDENT: Any further cross examination?

BY DR. HOFFMAN:

Q. Witness, if these civilians and the Farben Masters or foremen told you about the gassings, what explanations did they use and did they regret these goings-on or what?

A. No, they did not regret it. They did not regret it. They informed - as I said in my affidavit - they informed us that Germany worked for the Jews before Hitler had come to power and now the Jews worked for Germany until they got so they can't work and then they put them in the crematorium and the gas chambers.

Q. Were only Jews discussed in that connection?

A. Only Jews.

Q. I have no further questions.

THE PRESIDENT: Any further cross examination?

Any redirect?

REDIRECT EXAMINATION

BY MR. MINSKOFF:

Q. Just one question, Your Honors.

Of the inmates that you saw and knew there, what percentage would you say were Jews?

A. What percentage? I should say the greater percentage of them were Jews. Approximately 75% of them were Jews.

Q. Thank you.

THE PRESIDENT: Any further examination of this witness on behalf of the Prosecution or Defense?

Since none has been requested, the witness is excused.

Call your next witness.

MR. MINSKOFF: Mr. Hill. Also of British nationality.

THE PRESIDENT: Bring him in.

MR. MINSKOFF: Mr. Hill's affidavit, if it please the Court, is contained in Book 78 and the Prosecution offers it in evidence at this time as its Exhibit 1495. It appears as Document 11704. It's on page

116 of the English and 114 of the German, in Book 78.

THE PRESIDENT: Will the messenger go to our chambers and bring in our Book 78?

(CHARLES HILL, a witness, took the stand and testified as follows:)

Mr. Witness, you will remain standing for the purpose of being sworn. If you will raise your right hand, I shall administer to you the oath, after which you can say "I do."

Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE PRESIDENT: You may be seated.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q. Mr. Hill, what is your full name?

A. Charles Hill.

Q. And where do you reside?

A. 28, Upper West Grove, Manchester, England.

Q. In respect to your affidavit, which has been introduced as Prosecution Exhibit 1495, are there any corrections or additions that you wish to make at the present time?

A. No.

Q. Mr. Hill, were you ever a member of the Communist Party?

A. Never.

Q. Thank you, Mr. Hill.

That is all for the Prosecution.

THE PRESIDENT: The Defense may cross examine.

CROSS EXAMINATION

BY DR. SEIDL (Defense Counsel for the Defendant Duerrfeld):

Q. Witness, when were you sent to Auschwitz?

A. In September, 1943.

Q. And ever since that time you worked with I. G. Farben? Is that true?

A. That's correct.

Q. How many prisoners-of-war were already at Auschwitz when you arrived there?

A. Approximately two hundred.

Q. And in what camp were they housed? Can you give us the number of the camp?

A. Lager VIII and Lager VI.

Q. Well, at first, they were in Lager VIII?

A. That's correct.

Q. And when were they transferred to Lager VI?

A. Round about May, 1944.

Q. But, as time went on, the number of British prisoners-of-war increased. That is correct, isn't it?

A. Yes, that is correct.

Q. What was the number of English prisoners-of-war when it was at its highest?

A. I couldn't tell you the approximate number.

Q. But, witness, you must be able to tell us whether it was 500, two thousand, or what?

A. It was round about the 1200 mark, I should think, at the highest. That's to the best of my ability.

Q. Under whose administration was Lager VIII and, later Lager VI? Were German Wehrmacht officers administering the camp?

A. There was a German Wehrmacht officer, yes.

Q. And the guards were German troops, weren't they?

A. That's correct.

Q. The supervision of these two physicians was in the hands of a German Wehrmacht physician, is that true?

A. That's true, I should imagine, yes.

Q. Witness, did you ever learn that representatives of the International Red Cross at Geneva repeatedly visited your camp?

A. Yes, I did.

Q. Did you hear how often they went there?

A. No, I can't remember how often they came.

Q. Did you hear, or were you told, that this commission found that this camp was beyond reproach and an example of its kind?

A. Beyond reproach? Could you explain that, please? I.....

Q. I wanted to put a question to you. Do you know anything about the result of this inspection of the commission?

A. No, I didn't get to know anything about the result.

Q. Now, witness, you were yourself assigned to work in the I.G. camp. In what factories were you working and what kind of a job did you have?

A. The first job I had was with the cable gang.

Q. And what was your exact job? Did you have to install cables or what?

A. We had to install them, dig the trenches and install them. That's correct.

Q. What is your profession, witness?

A. In civilian life?

Q. Yes, civilian life.

A. Bus conductor.

Q. Were you always working with this detail or did you later go over to another work detail?

A. In Auschwitz?

Q. Yes.

A. I went over to another detail.

Q. What work detail was it and what kind of work did you have to do there?

A. I was hauling pipes about and hauling kessels around.

Q. But this work was facilitated by the use of machines, isn't that true?

A. Machines?

Q. Trucks.

A. Sorry, I can't get the meaning of that.

Q. Well, how did you transport these drossels that you talked about?

A. With a block and tackle and over-head crane.

Q. That's what I wanted to know from you, witness. In other words, you had machine tools which made the work easier, did you?

A. I'm sorry, but that was manual work. That was with a chain, if you understand my meaning. We had to haul on the chain.

THE PRESIDENT: How did you get your power? Did you use manpower to operate the block-and-tackle and crane?

THE WITNESS: We had to fix it ourselves, if you understand me.

THE PRESIDENT: Did you have any electricity or anything like that?

THE WITNESS: No, never.

BY DR. SEIDL:

Q. With the various details where you worked, there were other workers too who were not prisoners-of-war, is that true?

A. That's true, yes.

Q. Can you tell the Tribunal what kind of workers they were? Were they Germans, Frenchmen, Poles?

A. There were all those and Haeftlingey, Russian civilian workers, French civilians. All of them.

Q. Now, witness, the inmates obviously worked together with the prisoners-of-war and the other workers. Also the German workers. Is that true?

A. That's true.

Q. Would you explain the assertion, witness, that the inmates

were worked to death in the I. G. Farben plant after you said that they had the same work that you had and the other workers?

A. They were definitely worked to death. They looked like skeletons, very thin, had raw sores, had no clothes properly.

Q. Witness, please excuse my interruption. The work of the inmates was the same as the work of all other workers? The same work which you carried out and all the other prisoners-of-war?

A. No, they did other work besides.

Q. For instance, they had to lay cables. Is that true?

A. They had to lay cables. That's true.

Q. But they were assigned to other jobs - installation jobs, etc.?

A. Installations such as what? Could you explain, Mr. Counsel?

Q. For instance, they had to work installing electrical equipment, etc.?

A. Yes, that's true. That's quite true.

Q Did it ever happen that accidents occurred in the I. G. plant?

A Yes, it did.

Q What happened when something like that occurred?

A Well, if it was a British prisoner, we had our own medical attendants there; if it was a "Haftlinge" - they were left there until they went home at night.

Q You said if he was an inmate he was left there. Isn't it true that the ambulance station of the SS was notified, and then picked up that inmate?

A Not that I know of. I had nothing to do with the SS. I am sorry.

Q Did you ever talk to German civilians, witness?

A Yes, I did.

Q Do you speak German yourself?

A Some. Enough to get by.

Q Would you, for instance, be in a position to answer my questions in the German language?

A Not all of them. But I should imagine I would get the idea. It is over two years now since I had anything to do with it.

Q Under paragraph three of your affidavit you say that at one time the SS were searching for inmates who had escaped from another camp. What camp was that?

A I don't know. I couldn't say what camp they escaped from. They were looking for the Haftlinge who had escaped.

Q But you don't know from what camps these inmates escaped, do you?

A Yes, we were—it was generally understood that they had escaped from the gas chambers.

Q Now, witness, I must put to you that in your affidavit it says that, and I quote, "inmates who had escaped from the Concentration Camp Auschwitz." How do you know that? Who told you about it? Did they tell you at the camp, or did the interrogators tell you about it?

A I think in my affidavit I say that they escaped from the gas

chambers.

Q You say in your affidavit that they had escaped from Auschwitz.

A Well, Auschwitz was all one to me.

Q You say that in the camp the opinion prevailed that concentration camp inmates were being gassed at Auschwitz. Who told you that?

A My masters, civilians, everyone...it was general knowledge in Auschwitz.

Q What is the name of the men who told you that, witness? Can you give us his name?

A That isn't only one. Meister Stieler, Weiss--

Q Go on. Were they I. G. foremen, I.G. masters?

A Farben men, I should imagine, yes.

Q You only remember two. Stieler and Weiss?

A Stieler, Weiss, and -- we knew them by nick names, if you understand me.

Q Well, that will be sufficient. Now, witness, what did Meister Stieler, or what did Meister Weiss, tell you -- exactly?

A Well, it is going a long time back for the exact words.

Q You don't have to remember the exact words. It will be quite sufficient if you give me the exact content of what they said.

A Well, we used to talk, and they -- I used to say that the treatment of these Haeftlinge was very bad, and they'd say, well, it is... it is up to them to complain about it...they can't complain about it, but-- well, I can't put it into words exactly, if you will just excuse me a minute.. We used to talk amongst ourselves, if you understand what I mean. If there was nobody around they would talk to us, and we used to get talking on various subjects.

THE PRESIDENT: Mr. Witness, will you try to answer the question that the counsel asked; if you can't remember the words, just give the substance of the conversations that you had with these men, if you can remember.

A I can't remember. I am sorry.

Q (By Dr. Seidl) Witness, in what factory did Meister Stieler work? Can you tell us exactly where he worked? Give us the number of the factory, where it was located.

A It was the last one near the German Lager, going out on to the Auschwitz road, there were work shops there... I can't actually remember the number of that factory.

Q Witness, behind you there is a chart. On this chart you have the entire plant. You have all the roads -- the direct roads and the cross roads. Just look at this chart and then turn around and speak into the microphone and give us exactly the street according to its number there, and tell us where the factory was.

A Around about where the arrows are, on E street. That's correct. Around about there.

Q And where was Meister Weiss, do you remember where he worked, and do you remember what he told you? That is something which you made subject of in your affidavit.

A Yes, they used to say to us that the Jews had lost the last war for them, and when they came back the Jews were in all the good positions, and things like that.

Q He told you that, did he?

A Yes.

DR. SEIDL: Very well, That is sufficient. No further questions.

THE PRESIDENT: Any further cross examination?

CROSS EXAMINATION

BY DR. DRISCHEL (for defendant Ambros):

Q Witness, did the Meisters of I. G. talk to you very freely, or did they only do that whenever SS guards weren't around?

A They never spoke to us whenever there were any guards of any kind around. We worked in buildings alone.

Q Did these Meisters of the I.G. express their own regrets about the incidents, and about what the SS were doing?

A They never expressed their regrets, no.

Q But if I understood you correctly, you said that in the presence of the SS the Meisters didn't speak to you. Were the Meisters themselves afraid of the SS - because they might be reported?

A Yes, that was it. They were all afraid of the SS.

Q Did you know that it was really prohibited for the I. G. Meisters to talk to prisoners of war?

A I knew that, yes.

Q Witness, is it true that English prisoners-of-war through I. G. Meisters repeatedly received mail, through illegal channels, - that mail was sent out and came in? Is it true that I. G. Meisters gave you assistance in sending mail to your relatives at home?

A This is the first time I have heard of it.

Q You didn't hear that from your friends, either?

A I beg your pardon--

THE PRESIDENT: Ask another question, counsel.

Q Do you know that some foremen were arrested, because they talked to P.O.W. which was prohibited?

A No.

Q No further questions.,

CROSS-EXAMINATION BY DR. DIX.

Q You said that you only talked about these matters when no one was around, did I understand that correctly?

A Yes.

Q In other words, such conversations were confidential?

A They were confidential.

DR. DIX: Thank you.

THE PRESIDENT: Any further cross examination? Any redirect examination?

MR. MINSKOFF: No, your Honor.

THE PRESIDENT: The witness is excused. The Marshal will escort him from the box.

Can you tell us, before the recess, the name of your next witness?

MR. MINSKOFF: Mr. /frime, French nationality.

THE PRESIDENT: Very well. The Marshal will have the witness in when we reconvene after recess.

The Tribunal will now rise.

THE MARSHAL: There will be a fifteen minute recess.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal would like to have the record show that the defendant Hurster was excused today for the purpose of receiving some medical treatment.

GREGOIRE M. AFRINE, a witness, was examined and testified as follows:

THE PRESIDENT: Mr. Witness, you will remain standing for the purpose of being sworn, I shall state the oath of your nationality to you and then ask you to raise your hand and say that "I swear".

You swear to speak without hate nor fear, to say the truth, all the truth, only the truth?

You will now raise your right hand and say, "I swear".

THE WITNESS: I swear.

THE PRESIDENT: You may be seated.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q Mr. Afrine, what is your full name?

A Gregoire Afrine.

Q And where do you reside?

A 113 Rue de Fauberg Poissonniere, Paris..

THE PRESIDENT: Pardon me, Mr. Prosecutor, will you give us, please, the book and page reference to the affidavit?

MR. MINSKOFF: This is Book 75, page 92 of the English. It appears as Prosecution's Exhibit 1465.

THE PRESIDENT: Thank you. You may go ahead.

BY MR. MINSKOFF:

Q With respect to the Prosecution's Exhibit 1465, your affidavit, are there any corrections or additions that you wish to make at this time?

A No, none.

DR. NELTE: I did not understand, Mr. President, whether the Prosecution intends to omit the parts of the affidavit which were not offered in evidence according to your ruling on pages 4 and 5 of the English text.

Before the session the Prosecutor said that he would explain this to me. I would be very grateful to him if he would do so.

THE PRESIDENT: That should be done on the record.

MR. MINSKOFF: The affidavit as it presently stands before the Tribunal is without the part which was stricken out on the record, and there is no intention at this time to introduce that part.

THE PRESIDENT: Will you indicate to us again for our books — just a moment. Maybe it is not necessary. Our books are so marked. Does Counsel for the Defense understand the parts that are out?

DR. HELTZ: Yes.

BY MR. MINSKOFF:

Q The last question, if I may repeat it, was are there any corrections or additions that you wish to make at the present time?

A No, none.

Q Mr. Afrim, were you ever a member of the Communist Party?

A No, I don't belong to any Party.

MR. MINSKOFF: Those are all the questions of the Prosecution.

Your witness.

THE PRESIDENT: The Defense may cross examine.

Now, Counsel, just so that there may be no misunderstanding, you understand, of course, that you will not cross examine with reference to the parts of the document that have been eliminated by the Prosecution?

DR. SEIDL: I shall limit the cross examination to the parts which were offered in evidence by the Prosecution.

THE PRESIDENT: That is correct.

CROSS EXAMINATION

BY DR. SEIDL:

Q Witness, to complete the record, please tell me when you were born?

A I was born on the 3rd of May, 1906.

Q And where were you born?

A In Sevastopol in Russia.

Q What is your nationality?

A I am just waiting for my French naturalization. I was already naturalized but during the Occupation my nationality was taken from me. Still I am regarded as being a Frenchman.

Q When did you lose your Russian citizenship?

A I lost my Russian citizenship in the beginning of 1933, but we already left Russia during the Revolution, and in 1925 I already came to France.

Q And then you acquired French citizenship?

A Yes. Yes. I made my compulsory military service in France. I received my French citizenship, and, of course, I took part in the War, and when I was discharged from the army in 1943 by the orders of the Vichy Government, my nationality was taken from me and I was called a Stateless man.

Q And if I understand you correctly, witness, at the moment you are Stateless?

A Yes, but waiting for my naturalization.

Q Very well. The name "Afrine" was always your name, or did you have another name earlier?

A Since my birth. No. No. Always since my birth. All my family have the same name.

Q Now, witness, on the 22nd of January, 1944, you were arrested. What was the reason for your arrest?

A The reason in general I couldn't tell you, but I think it was because I was a half-Jew.

Q And then you came to Auschwitz. When did you arrive there?

A The 22nd of January I was brought to the Austerlitz station as a deportee, and the 30th of June, 1944, I was deported from the camp.

Q And where did you go then?

A At that moment I was deported to Auschwitz where I stayed just for one single day, and soon after we reported there we were sent to the

camp of Monowitz for the construction of Buna.

Q And how long were you in Monowitz, or Camp 4, as it was also called?

A Well, we arrived in Auschwitz exactly at eleven o'clock on the 3rd of July, and on the 4th of July we came to Monowitz, and there I stayed until our liberation, and at that time I was operated on because I had a phlegmon on my knee, and I stayed in Monowitz until the 9th of February, 1945.

Q Is it not true that the majority of the prisoners were evacuated by the SS from Camp 4 on the 15th of January, 1945, and were sent into the Reich?

A From Monowitz I saw a comrade who was taken away by the Germans the 15th of January near a forest near a little village called Koniany. There were about ten thousand of the twelve thousand we were, and they were massacred there.

Q Did you see that yourself? How do you know that?

A No. I repeat. That was told to me by a friend whom I met later and who told me that because he was in that convoy. I couldn't see him because I was arrested and I was in Auschwitz and stayed there.

Q What work did you do in the I.G. plant in Auschwitz?

A I myself being an electrician of profession, I was in a electrical detail, I was in the detail 86.

Q When did you start work in the morning, witness?

A Well, we were awakened exactly in the morning at four o'clock. At four-thirty we had already to be ready to fall in on the square. There we had assembled and stayed until seven o'clock, and then under supervision of the SS we were led to the Buna Work where we worked from seven in the morning until five o'clock in the evening.

THE PRESIDENT: Pardon me just a moment, Mr. Witness, did anyone explain to you the purpose of these lights in front of you?

THE WITNESS: Yes.

THE PRESIDENT: Please observe it and speak a little more slowly, if you will, and make your answers as brief and direct as possible. Do not feel called upon to volunteer information. If further questions are desired, they will be asked.

BY DR. SEIDL:

Q You insist, witness, that the roll call in the morning took two and a half hours. Even if I put to you that according to the testimony of other witnesses the roll call lasted only half an hour at that period, is that still your impression?

A Oh, no. In the morning I would say the roll call itself lasted at least for about an hour or a half an hour, but we were on the roll call square at least for two hours or two hours and a half.

Q And then you say that aside from you, there were twelve thousand prisoners working in the plant. How did you know this figure?

A These are figures of course which were only hearsay, if you must know that, approximate figures according to the blocks. There were fifty blocks and in principle there were two hundred to two hundred fifty inmates in every block.

Q Is it not true that only part of the inmates of the camp went to the plant to work daily, and that quite a large number, sometimes up to fifteen hundred, did labor service in Camp 4?

A I couldn't say exactly the number, but I know that in the camp remained what we called a block-elder cleaning service, and that many people stayed in the camp, but I can't tell you the number.

Q Were you ever in the hospital of the camp?

A Yes, almost to the end, that is, exactly on 31 December I was operated on myself because of phlegmon of the knee.

Q And who performed this operation? Was that an SS doctor or was that a prisoner?

A No, it was a German doctor, but I can't tell you whether he was SS. Anyhow he was dressed like one of the inmates.

Q While you were working in the electrical detail, what work did you have to do?

A During the first two or three weeks even I was employed to make holes in the wall, and we put wires through and then our foreman had seen that I knew my work, and he sent me to the workshop and there I knew my work, and he sent me to the workshop and there I made installations.

Q Then you did the same work in the I. G. plant that you did usually when you were at liberty, is that right?

A No. No, because I studied for the position of an electrical engineer, and I did not do work as a laborer, but there I had to do very hard work and manual work.

Q In your affidavit you mention several names including Oberingenieur Dix. Do you know whether he belonged to I.G. Farben or to another firm, one of the two hundred and fifty firms which worked on the plant site?

A No, he himself one day told us that he worked for I. G. Farben and that he himself wore a swastika, and he told us that if he were not a member of the Party, he couldn't work as an engineer. It was he himself who told me that.

Q You also mention Mr. Leschen. Do you know whether he worked for I. G. Farben Industry or for some other firm?

A In the building where we worked, all of us workers knew very well that we worked for I.G. Farben, and Mr. Leschen, whom I already knew in Paris when I was interned there, worked directly for I. G. We were told in the morning that an inspector of I. G. Farben would come to see us and we were advised that we should do good work and not even stop for a second. I am not quite certain, but I suppose that Mr. Leschen was a member of I. G. Farben.

Q During all the time that you worked in the I.G. Farben plant, did anyone ever mistreat you?

A I myself? No, I can't say that I was mistreated, but I saw comrades of mine who really were mistreated by the foremen.

Q Do you know which foremen these were? Can you give me any names?

A Well, yes, I remember one only because we worked immediately under his supervision and whose name was Foreman Scharr. As far as the other foremen are concerned, it is impossible for me to tell you the names.

Q Where did this man, Scharr work, witness? Did he not work with you?

A Yes. He was supervisor of our detail. But the foreman himself did not work.

Q And you mention an incident on the 26th of September, 1944. Is it correct if I say— and please correct me if I am wrong — that this did not happen in the I.G. plant but in Camp 4 where you lived?

A This event of the four who were selected, you want to say?

Q No. You say that on the 26th of December, 1944, you fell out of the rank and that one of the SS guards wounded you in the knee. Where did that happen, in the plant or in Camp 4?

A That was not the 26th of September. That was the 26th of December, 1944. That was on the road after we had left the camp and we were between the barbed wires about in the middle of the road between our camp and the plant proper.

Q Camp 4 where you lived was guarded and administered by the SS, is that right?

A Yes, supervised by the SS, but administered by criminals.

Q Now, witness, a number of witnesses have appeared here who worked in this administration. I do not believe that you want to call them criminals. Apparently you mean that there was a prisoners' administration in Camp 4 and that there was a camp-elder and a block-elder, and that these were all prisoners, is that what you mean?

A That was so, of course, we were employed a little bit everywhere, in the office as well as in administrative services, but we were directed by SS, and then the camp chief, for instance, was a criminal, but I don't want to say that all the inmates who worked in the offices were criminals.

They were put in the offices just as I was assigned to the electrical detail.

Q While you were working in the electrical detail in the I. G. plant, could you move relatively freely?

A No. We were supervised by the SS and we were not permitted to stop even for the shortest time. Immediately we got kicked and very often even the foreman sent word or rather a report to the supervisors who called us in and punished us even very severely.

Q Now, witness, did you yourself ever see such a report or was such a report ever made about you personally?

A No, I had never a report made against me, but I had a friend who was caught when he smoked.

Q Witness, I think you have already answered the question.

MR. MINSKOFF: I think the witness should be permitted to answer the question.

THE PRESIDENT: No. He did answer the question. He was volunteering information.

Objection sustained.

BY DR. SEIDL:

Q Witness, you say that you were guarded by SS men in the plant. Was it not so that while you were working in the plant the SS merely patrolled the fences at certain intervals and that within the plant you were not guarded at all, or that you only saw SS men very rarely?

A Yes, and I want to say around the plant just as around the camp there were Wehrmacht soldiers, army soldiers, who supervised us, but the SS went from one building to another one. Of course, we saw them every day about four or five or six times. It varied.

Q Then you go on to say that one could recognize the Farben people by their swastika arm bands. Do you mean to say that all members of the I.G. Farben concern appeared in the plant with swastika arm bands?

A Well, no, I didn't say they had arm bands. They were all dressed

as civilians and most of them — not even all of them— had a swastika badge on their coats, but they had no arm bands.

Q Then, witness, I must put to you what it says in your affidavit. It says and I quote on page of the original, page 4 of the English: "The Farben men were civilians with swastika arm bands, the SS were in uniform and the Capos were fellow prisoners."

This gives the definite impression that all Farben men wore swastika arm bands, or was it not so that only a very small proportion of the civilians or those who had a definite function wore such arm bands to distinguish them?

A. No; because what I wanted to say is that even if it were understood like that, there were no arm bands with swastikas. What I saw were people with badges on their coats—just as I, for a certain time, wore the badge of the deportees.

Q. Now, I will go into something else, Witness. You said that the prisoners lived in the camp Monowitz and that they could go into the I.G. plant without going outside of the barbed wire. Is it not true that between the I.G. plant and Camp IV, where you lived, there was a public road which you had to cross, and that, of course, it was necessary for you to pass through the barbed wire in two places at least?

A. During all the time I was at Monowitz and where I worked every day until the 31st of December, I never saw a passage where there was no barbed wire. We continued on a road—I remember that very well—but I saw barbed wires everywhere.

Q. Witness, the plant fence which went around all the factory terrain: was that the barbed wire, or was that not just a plain wire fence?

A. I don't know because I never touched that wire; so I could say I saw wires because we were forbidden to approach them. I cannot say whether or not they were electrified.

Q. Witness, behind you there is a map which shows the I.G. plant in the middle. And south of it you will see Camp IV. Please tell me how you got from Camp IV to the plant. Don't show it on the map, but describe it into the microphone.

THE PRESIDENT: Mr. Witness, you may stand and look at the map, but before you start to talk again sit down again

and talk into the microphone.

A. According to the map I cannot indicate exactly, but as far as I remember I can say exactly how we crossed the road. As soon as we got out of the main gate, about 80 or 90 meters, there was a road to our right, and we turned left. We walked along the railroad tracks—evidently we were isolated from those rails—about 200 or 250 meters, and then we turned again to the left; and after about 400 or 500 meters we found the entrance to the camp. That is, as far as I remember, the road we took every morning.

Q. Witness, you say you left the gate; you took a certain route, and then you entered the gate. Isn't it quite obvious that you must have left the barbed wire—otherwise, there would have been no need to go out of one gate and into another?

A. Yes, of course there was a gate where we went out and while we walked we had barbed wire all around us, but the camp itself was surrounded by barbed wire, and that gate was not a gate that could be closed; it was not a real gate. We just had the impression of crossing a passage, and it was just at the edge of the plant.

Q. Now, witness, you also said that some of the prisoners and some of the workers and foremen had connections with the concentration camp Auschwitz. How were conditions in Monowitz, compared with conditions in Auschwitz?

Were conditions in Camp IV much better than in the main camp at Auschwitz? or what did the people tell you about it.

A. First of all, I did not understand that question quite well. I would at least repeat that civilians never could enter the camp. We had, of course, relations with civilians, although it was forbidden, but that happened at

the plant itself. Now, the living conditions in Monowitz we know ourselves, we were worked less hard than in Auschwitz. We knew that there were crematories in Auschwitz and we know what we could expect.

Q. Witness, you say you knew more or less what to expect. Do you mean that what you were told was very indefinite? You didn't know exactly what was going on?

A. No; when, for instance, we were sent to Auschwitz, of course we couldn't say exactly that it was our fate to go to the crematory; that was after the selections that were made every month that we were absolutely sure to go to the crematories. Very often during work the foreman, as well as the others, would say: "You will go to the crematory; you go to Auschwitz."

Q. What foreman said that to you? Can you give me the name?

A. No; that is impossible. They were young fellows, and I know them because they worked around us. They supervised us and indicated what work we had to do—but I don't know their names.

Q. You were always talking about Auschwitz and not Birkenau, when you talked about that subject?

A. Yes, we talked about Auschwitz; of course we know very well that it was at Birkenau where there were four crematories and that there were only two in Auschwitz.

Q. Do you know that Auschwitz was a very big concentration camp, with tens of thousands of prisoners, where, in the typhus epidemic alone, there was a high death rate?

A. No; I can't say that I knew that the camp of Auschwitz were all affiliated like Monowitz and all the other ones. I was told there were about a hundred-forty to about one hundred-fifty inmates but I myself am not

certain about that. And, as far as the disease is concerned, I did not know that they were sick. But the work was very hard because almost all—I say "almost" because some always remained in the camp—were in outside details, doing ground work.

Q. You say that the work in Auschwitz was very, very hard. Do you mean this work was much harder than in the I.G. plant, for instance?

A. Certainly, for some people, for example, for me, the work in Monowitz was not so hard. For others, for instance the cable layers in Monowitz, it was very hard. That was our disciplinary detail. A man couldn't stand it for more than three months.

Q. Witness, you then say that in the I.G. plant at Auschwitz a big chimney was built, a smokestack. Was that built while you were working in the plant?

A. No; the plant and the smoke stack were already constructed when we arrived. There were comrades who told me in discussions, just as they told others, that that smokestack cost three thousand lives.

Q. Your friends told you that?

A. Yes; old inmates who had been there for two, three or four years.

Q. Then you also speak of executions at Camp IV. How many such executions did you yourself see?

A. Well, I could tell you, if you will permit me a moment... I saw, I think, six or seven—but I am not quite sure of that number. Anyhow six or seven, and always by two's and three's.

Q. Now, witness, you were in Monowitz for more than six months and you say you saw six or seven. Then your statement in the affidavit cannot possibly be right because

you say there were two or three executions per week—and you saw only six or seven in six months...

A. Yes; these executions usually were towards the end. During the first months there were no executions—at least I saw none.

Q. Then you have to make a certain reservation with respect to this statement in your affidavit.

A. Well, what do you mean by reservation?

Q. That is, that it is not true that there was an average of two or three hangings a week. It could not be right if you say that in six months you yourself only saw six or seven.

A. Yes; in the beginning I saw no executions, but it happened—as I already said—that we saw about two executions a week towards the end. Well, if you want to say so, in the month of November until the end, up to four days before the evacuation—no, four days before I was operated on, on the 31st of December, we saw executions of—I don't remember, but there were three or four a week.

Q. I think that will suffice. Now, something else, witness. In the electrical detail where you worked there were Germans and foreign workers employed, were there not? They did the same work? Did prisoners collapse from exhaustion and over-work in this detail?

A. In our detail? Not in ours. No, I saw none who collapsed but I saw some who were very tired, who worked with great difficulty, but I saw others collapse in details working alongside ours.

DR. SEIDL: No further questions.

THE PRESIDENT: Any further examination of this witness?

BY DR. DIX: You said, witness that the Kapos were to a great extent criminals and I should like to ask you whether these Kapos had the corresponding triangular insignia to indicate that they were criminals?

A. No, many of these Kapos had their criminal chevrons but I can say that I even myself in my detail 186, had political Kapos for he had a red chevron and he was a German Jew.

Q. Did you know the clerks of the offices and of the hospital and the camp administration? Did you know them by sight?

A. Yes, I saw some of them. In the infirmary there were many.

Q. Most of these clerks were political prisoners, I assume, with the red insignia?

A. Yes, in the infirmary I saw nothing but the red chevrons. In the office I also saw red and yellow triangles and amongst the block oldest there were some green triangles.

Q. Then the block oldest had the green insignia in many instances? Did I understand you correctly?

A. Yes. I can even indicate the blocks in which the block oldest had the green triangles in. Block 50 was a green chevron and in 52 there was a green one.

Q. And was it like that, that the group with the green triangle on the one hand, and the group with the red triangle on the other hand, held together very much and helped one another?

MR. MINSKOFF: May it please the Court, it's difficult to see what possible connection the line of questioning has to the affidavit in evidence.

DR. DIX: That's very important for the background and for conditions in the Concentration Camp. It will become important for evaluating the testimony touching the credibility of the various witnesses.

THE PRESIDENT: It may be regarded as preliminary. We cannot tell as to what it is leading but unless it's the intention of counsel to connect this inquiry up with the affidavit it should not be pursued.

We will leave it for counsel to say because we can't know what his object or purpose may be.

MR. SPRECHER: I don't have in my own mind any questions about the purpose of this type of testimony. I think you found out as the Tribunal what the objective of the testimony before was, when defense counsel started to ask people about their political affiliations. I had nothing to do with anything in the affidavit or, in my opinion, with the credibility of the witnesses. It's an attempt to insinuate the whole question as to whether or not some of these political persecutees of the Third Reich of Germany were Communists and, of course, many of them were Communists.

THE PRESIDENT: I think I recall that perhaps the Prosecution has gone into that question as much as the Defense.

MR. SPRECHER: That, your Honor, was because we think it's an impressive question and we may respectfully submit that it was tolerated and we want to bring out the full picture since that was allowed --

THE PRESIDENT: The proper remedy is to object to other counsel's questions and not commit a double error yourself. The Tribunal has ruled now and let's not take time and if counsel for the defense says those questions are preliminary and may lead to something that is within the scope of this affidavit -- if not it should not be asked. We cannot read his mind or know what his purpose may be and we will not surmise.

DR. DIX: I have only a very few questions in this direction and I believe that they are important for the evaluation of all of the affidavits that we have had up to now. But if this is inadmissible I shall discontinue this line of questions now and clarify this issue later if necessary. But the witness has expressly said in his affidavit that the administration was composed of criminals and I believe it's within the scope of the affidavit if I try to clarify who were criminals and who were political prisoners and what was their attitude. The witness has said that the criminals were very unfriendly towards their fellow prisoners. I believe that all of these things are pertinent to the

affidavit.

MR. SPRECHER: On the statement that "it may be useful in evaluating all of the affidavits", of course, the counsel himself has indicated it's beyond the scope of cross examination. Now, your Honor, if you will look at the affidavit, the statement about criminals has to do with the Kapos. Dr. Dix is not talking about Kapos. He is going into the administration inmates who were in other places and by that indirect means is attempting to bring in this whole political issue again.

THE PRESIDENT: The Tribunal has ruled and counsel may ask his question. Perhaps, counsel, you had better repeat it so that the witness understand it.

BY DR. DIX:

Q. I asked whether these two groups, the green ones and the Red ones co-operated and helped one another, that is to say, the green ones helped each other and the red ones helped one another, each group among themselves?

A. I could not say exactly what were the relations but all that I say was that the Kapos talked among themselves and the colors talked among themselves. I cannot say exactly what were their relations.

Q. Those Kapos remained in the camp and were seldom changed; is that not true?

A. Yes, and principally I saw ours, for instance. I could not, after all supervise whether all of the Kapos were transferred or not. Now, ours stayed with us for several months.

Q. And the other prisoners had to obey the Kapos, did they not?

A. Yes, in principle we had to obey everyone; his own Kapo but if another Kapo gave you an order, of course, you had to execute his work, too.

THE PRESIDENT: Any further cross examination?

BY DR. DRISCHEL:

Q. Witness, I have only very few questions. You said in your affidavit something about gassing. Did you talk to any SS men or Kapos

about gassings or did these people ever tell you anything about it?

A. Never have I talked to any SS. As to the SS, by the way, we were not permitted to approach them when they called us. We had to stop three meters in front of them. The Kapos told us about that pretty often and so did our comrades.

Q. And if you talked to I. G. foreman or civilians, did they talk in the presence of SS men about gassing or inhumane measures?

A. No, there was only one thing we were told very often which we always heard again, "you will go to the crematorium", but they did not talk about gassing.

Q. Did you have the impression or rather did it happen that in the presence of SS guards even the I. G. foreman were very carefully and timid in their conversations with you, or did they not talk to you at all then?

A. They were careful not to be seen talking to us.

DR. DRISCHEL: Thank you.

THE PRESIDENT: Anything further, gentlemen? Any redirect?

MR. MINSKOFF: Here's two points, if it please the Court, I would like to straighten out. There is a slight misunderstanding with respect to the Swastika badges. In the English it appears as Swastika badges. The German translation may create the impression of arm bands. The English is correct. Incidentally the original is in English. I move at this time that the questions and answers with respect to the co-operation between the political prisoners and the criminal prisoners be stricken from the record.

THE PRESIDENT: The motion will be overruled.

MR. MINSKOFF: No further questions, Your Honor.

DR. GIERLICH:

Q. Witness, do you know English?

A. Yes, I speak English. I can read it but I can't talk it very well.

Q. So that you could carry on a fluent conversation?

A. Well, fluently enough but I have difficulties in explaining myself but I can read and I can understand everything I read.

Q. Thank you.

THE PRESIDENT: Anything further from this witness? The Tribunal is about to excuse him. Witness, you are excused and the Marshal will escort you out. The Prosecution will call it's next witness.

MR. MINSKOFF: May it please the Court, at this time the Prosecution will proceed with documents in view of having exhausted the various witnesses that were called.

THE PRESIDENT: Very well.

MR. MINSKOFF: Book No. 77 is the next Document Book.

THE PRESIDENT: Just a moment, please. None of us have those books. Send for the books.

MR. SPRECHER: Mr. President, while we are waiting for the books to be brought in, might I make the announcements?

THE PRESIDENT: Yes, surely.

MR. SPRECHER: For Monday afternoon, the first time we sit, there will be the following four witnesses: Spetter, Pfeiffer, and the two English witnesses, Hartland and Doyle. Now, the affidavits of the last two witnesses either have been distributed late this afternoon, or will be distributed late this afternoon, and if you receive any of these, if you just put them in your Document Book 75, which contains the largest number of affidavits on this same subject. In case we run through those witnesses--

THE PRESIDENT: Pardon me, are all of those affidavits in Book 75?

MR. SPRECHER: Your Honors, they have been distributed separately.

THE PRESIDENT: But they belong in Book 75?

MR. SPRECHER: Yes. And I might say that the first witness, Spetter, is Dutch, and the second one, Pfeiffer, is French. If we should run through those witnesses on Monday afternoon, we will go on with the document books.

THE PRESIDENT: Now what books will you use, then, Monday afternoon, if we do get through the witnesses?

MR. MINSKOFF: Nos. 77, 78, and 79.

MR. SPRECHER: Those will be the books, continuing from 77: 77, 78, 79, 80, and 81.

DR. SEIDL (Counsel for the defendant Duerrfeld): Your Honor, we waived the calling of nine witnesses, who were British prisoners of war and who submitted affidavits. We did that in order to help expedite the proceedings. If, however, the Prosecution is currently submitting new affidavits which are not yet in evidence then we could have held on to the nine affidavits which are here. By that I merely want to say that our intention is now being foiled by the Prosecution bringing in new affidavits, about which we have had no idea so far at all. Up to now, no mention has been made of the witnesses Hartland and Doyle, and under these

circumstances I should like to suggest to the Prosecution whether they would not consider just leaving the matter as they were with regard to the original witnesses. Then we would withdraw our waiver and we would know exactly where we stand.

MR. SPRECHER: We don't propose to do any bargaining on this basis, and we never indicated that we intended to. That is not our purpose in trying to bring out the truth in this trial. However, we did tell the Defense counsel that there were two more British witnesses here whom we had originally intended to put on the witness stand without affidavits. However, because we think it gives a better opportunity in this trial for Defense counsel to prepare for cross-examination and for the record to be clear, we have agreed that we would put in only affidavits by these two people, Hartland and Doyle, as well as the other two witnesses who are not English.

THE PRESIDENT: Now, the Tribunal understands that when counsel for the Defense waives cross-examination and says that the witness may not be called, it is because they are familiar with the contents of the document, first; they have in mind other ways of meeting the question, either with their own witnesses or their own documents, when the time comes. We cannot allow this matter to be calculated on a basis of comparative numbers of the affidavits. This Tribunal has no control over the affidavits that the Prosecution may offer, nor will it have any control in that regard, at least with respect to any of the evidence that may be offered by any of the parties. We shall have to treat this waiver as effective. We have no way of controlling the evidence that the Prosecution may subsequently wish to offer.

When the additional affidavits are made available to you, the gentlemen of the Defense can determine then, whether they wish to make any further waivers or whether they wish to stand on their right to cross-examine the witness. Whatever your decision is, that will be the policy of the Tribunal in that regard.

That is all we can say, gentlemen.

DR. DIX: Your Honor, I only have one question, because I don't know American law and its principles. Even under the aspect of cumulative matters, are there no misgivings about the submission of a large number of affidavits which, after all, contain the same thing? It is only a question, if I may put it to you. I don't know whether you can reply to it.

THE PRESIDENT: I should not undertake at this time to speak for the Tribunal in that regard further than to observe that it is well established in our jurisprudence that purely cumulative evidence is within the control of the Tribunal. After a certain mass of evidence upon a certain point has been produced, it is proper for the opposing party to say that any additional evidence would only be cumulative. And it is within the sound judicial discretion of the Tribunal, then, to say whether it will listen to additional evidence of that character. That, however, is very frequently influenced by the fact as to whether the opposing party says they intend to contest it or do not intend to contest it.

We have hardly reached the point, I feel, where the Tribunal would yet feel that it would wish to impose that sort of restriction upon either side, but certainly it is not without the realm of possibility; in any event, if evidence appears to be purely cumulative, piling up a large volume of record, it is within the power of the Tribunal, on suggestion or on its own motion, to take the situation in hand and say it will hear no more on that score. As I say, however, that is frequently influenced by the attitude of the opposition as to whether they say they are making an issue of it, because, manifestly, if there is an issue made, the Tribunal would not be so disposed to place limitations upon either side.

DR. SEIDL: (Counsel for the defendant Duerrfeld): Your Honor, let me only add that the witnesses Phoiffer and Spetter, who are also to be heard on Monday, have so far not been included in the document books, and that here too we are concerned with additional witnesses. Even though they are not English PW's, after all, however, they are new affidavits, and it is becoming increasingly difficult for the Defense as to how and under what circumstances they can waive their cross-examination. After all, we don't

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know when the Prosecution will stop sending in affidavits.

THE PRESIDENT: Well, gentlemen, there is not much to discuss at this time. Of course, we would not expect counsel for the Defense to make any commitment as to whether or not it will or will not waive the cross-examination with respect to an affidavit it hasn't seen. You should have an opportunity, of course, to know what the affidavit is and to determine for yourselves whether you think it worth while to cross-examine the witness.

We understood from the Prosecution that those affidavits would be distributed to you this afternoon, as they will be to us. And if you need a bit of time Monday—you will have Monday forenoon, and if you need a little more time for a little while, perhaps we can receive some exhibits until you have an opportunity to determine.

In view of the discussion that has intervened since the last witness was excused, it is hardly worth while now to start on the introduction of exhibits.

Have you any further announcement, Mr. Prosecutor?

MR. SPRECHER: None, Mr. President.

THE PRESIDENT: Does the Defense have anything to say at this time?

(No response)

Then bear in mind, gentlemen, that when we rise today it will be until 1:30 p.m. next Monday.

The Tribunal will now rise.

(At 1625 hours, 14 November 1947, a recess was taken until 1330 hours, Monday, 17 November 1947)

Official Transcript of American Military Tribunal
VI in the matter of the United States of America
against Carl Krauch, et al, defendants, sitting at
Nurnberg, Germany, on 17 November 1947, 0930-1630,
The Honorable Curtis G. Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.
Military Tribunal VI is now in session. God save the United States
of America and this Honorable Tribunal.

There will be order in the court.

THE PRESIDENT: The Marshal may report with respect to the atten-
dance of the defendants.

THE MARSHAL: May it please your Honor, all defendants are present
in court.

THE PRESIDENT: Has the Prosecution any preliminary remarks?

MR. SPRECHER: Mr. President, either just now or in a little while
I would like to correct certain parts of the record.

THE PRESIDENT: You may do it now if you are ready.

MR. SPRECHER: I am ready.

On the 28th of August, in the transcript at page 208, the Prosecu-
tion offered the following document, No. 2760-A--PS, as Exhibit No. 5.
This was an excerpt from Hitler's "Mein Kampf", "My Battle". The
English translation at that time read "41st Edition", instead of
"39th Edition", as is shown by the exhibit which was handed to the
Secretary General. The error originated from an erroneous translation
or transcription of the Roman numeral thirty-nine. We now resubmit
both English and German mimeographed copies which have been appropri-
ately corrected. They should be placed pages 25 to 28-B in the English
Document Book No. 1; and in the German Document Book No. 1, pages 24 to
28. I have seen that copies have gotten to the Secretary and to the
Defense Counsel. The original exhibit handed over to the Secretary
General remains, of course, unchanged.

The objection raised -- Excuse me, Mr. President, May I assume,
then, that Exhibit No. 5 is now in evidence?

THE PRESIDENT: We take it there will be no objection to that correction of the record, and the record will be considered amended and corrected accordingly and the proper substitution made of the exhibit.

MR. SPRECHER: Mr. President, the exhibit remains the same in this case, it is only the translation.

THE PRESIDENT: Yes, we so understand.

MR. SPRECHER: Because the objection was made to Exhibit No. 5, the Prosecution did not offer another document in Document Book No. 1 at that time. We now offer another set of excerpts from the same edition of "Mein Kampf", which has been given the Document No. PS-2760-B. We would like to offer that as Exhibit 1496. This should replace the Document PS-9358, in English Document Book No. 1, pages 29-31. That document was not offered in evidence, so it may be neglected by your Honors and, instead, will you please consider Prosecution Exhibit 1496. The appropriate page of the transcript is page 212. At that time, Mr. President, you observed that there was nothing before the Tribunal concerning the document because the Prosecution had not offered it. We have made the necessary number of English and German mimeographed copies available. If you will insert your new document in Book 1 at pages 29 and 30, I think it will correct the matter. In the German document book it would be inserted in Book I at pages 30 through 32.

THE PRESIDENT: The document identified as Prosecution Exhibit 1496 is admitted in evidence.

MR. SPRECHER: Mr. President, on the 4th of September, 1947, document NI-5764 was offered as Exhibit 236 and received in evidence. That is in Document Book 8, page 166. It was a file note of the Technical Committee, the TEA. Dr. Gierlich objected to the document at that time on the ground that there might be some question as to whether or not it was a proper piece of evidence from the TEA files, and although your Honors admitted it, you stated that the weight to be given to that piece of evidence might be affected by whether or not the Prosecution made some further showing with respect to its authenticity.

I have here in my hand, for the perusal of Defense Counsel, the original folder containing the file copy. I would like to offer, for the exhibit file, a certificate by Miss Esther Glassman, which lists a number of documents also found just prior to the document in question, as well as some afterwards, to indicate, by the chronology and by the placement of that document, that it was clearly taken from a file which does contain other file notes of the Technical Committee.

Now I merely ask that this be placed with the certificate in the exhibit file. A copy is available for Defense Counsel to check if they wish.

THE PRESIDENT: Is there any objection?

If not, the certificate may be placed in the folder with the original exhibit and made a part of the record.

MR. SPRECHER: There are three small corrections, mostly in the German transcript, which I would like to make, because it will take only one or two minutes, and I think any other procedure, Mr. President, would cause a very great amount of technical problems.

THE PRESIDENT: These relate to errors in the German books?

MR. SPRECHER: Yes.

THE PRESIDENT: Very well.

MR. SPRECHER: At the request of Dr. Bachem, a change has been made by way of an errata sheet to the German copies of Exhibit 339, which is NI-6649. In the eighth line the name "Kersten" appears, and, as Dr. Bachem points out, that should be "Krueger".

In Document Book 11 there are four corrections in translation which have been brought to our attention by Dr. Storkebaum, Counsel for the Defendant Schneider. They concern Document NI-9735, Exhibit 317, and Document NI-6846, Exhibit 318.

In NI-9753, Exhibit 317, in Book II, at page 187 of the English -- that appears at page 213 of the German -- "Landesfinanzamt" should be translated as "County Treasury" instead of "Country Treasury".

In Document NI-6846, Exhibit 318 — and all of the next corrections will apply to that document, at page 189, line 6 of the English — that appears at page 216, line 5 of the German — the following word, "Installationsgeschaeftsinhaber", should be translated as "owner of a plumbing firm", instead of "electric fittings business".

And then, at page 190 of the English appearing at page 219 of the German, in the last sentence the word "Hauptabwehrbeauftragter" should be translated as "Chief Counter-Intelligence Officer", instead of "Chief Security Officer."

The last correction on that document is at page 191 of the English, page 220 of the German. The word "Appell" should be translated "shop meeting" and not merely "meeting".

The last correction I would like to bring to the attention of the Tribunal and the record is also in Document Book 11. It is a correction to the German. An errata sheet has been made at the request of Dr. Nelte, Defense Counsel for the defendant Hoerlein, with respect to NI-6787, Exhibit 296. The errata sheets have been submitted to the Defense Center.

THE PRESIDENT: These corrections will be noted on the record.

Anything further from the Prosecution?

MR. SPRECHER: Nothing further, Mr. President.

THE PRESIDENT: Anything from the Defense at this time?

(No response)

Then the Prosecution may call the next witness.

MR. MINSKOFF: If it please the Court, the Prosecution at this time would like to go through Document Book No. 77.

THE PRESIDENT: Very well.

MR. MINSKOFF: And follow that up by the calling of witnesses.

The Prosecution offers at this time Document NI-838, as Prosecution's Exhibit 1497. It calls the Court's attention to page 1 of the English and 1 and 2 of the German, where it appears as a letter to Director Kuepper of I.G. Farben, from a Farben employee, Mr. Burth. It states,

among other things--he writes, incidentally, from Auschwitz: "You can imagine that the population is not going to behave in a friendly or even correct manner towards the Reich Germans, especially towards us I.G. people. The only thing that keeps these filthy people from becoming rebellious is the fact that armed power -- the concentration camp -- is in the background. The evil glances which are occasionally cast at us are not punishable. Apart from these facts, however, we are quite happy here."

Further on page 2 of the German and still on page 1 of the English:

"With a staff of such a size, you can well imagine that the number of accommodation barracks is constantly increasing and that a large city of shacks has developed. In addition to that, there is the circumstances that some thousand foreign workers see to it that our food supply does not deteriorate. Thus we find Italians, Frenchmen, Croats, Belgians, Poles, and, as the 'closet collaborators', the so-called criminal prisoners of all shades.

"That the Jewish race is playing a special part here you can well imagine. The diet and treatment of this sort of people is in accordance with our aim. Evidently, an increase in weight is hardly ever recorded for them. That bullets start whizzing at the slightest attempt of a change of air is also certain, as well as the fact that many have already disappeared as a result of 'sunstroke'."

On page 4 of the German and 2 of the English he states: "As regards the diet as such, I must say that every effort is being made to reconcile the many epicures among whom Reich Germans from every region are indeed to be found. The food is plentiful, but, on the other hand, every staff member, almost without exception, has developed such an excellent appetite that quite a few gaps must be filled somehow."

The next two documents, if it please the Court, are TEA meetings and are introduced in evidence as Prosecution's Exhibit 1498, that is NL-10943; and 1499, which is NL-10944.

On page 4 of the English and 15 of the German appears the attendance list to which the Court's special attention is called. That is in Exhibit 1498. And again, in 1499, the attendance list is on 11 of the English and 27 of the German.

The Prosecution wants to call attention also to the fact that with respect to 1498, there is a page in the English text which is missing, and which will be supplied to the Court just as soon as we possibly can. It is page 2 that is missing; the German text is complete.

The Prosecution offers NL-11085 as Exhibit 1500, without comments.

The Prosecution now offers NL-11140 as its Exhibit 1401, which is the minutes of a construction conference at which Ambros, Duerrfeld, and Schneider were present. The Court's attention is drawn to page 19 of the English and 35 of the German. I am sorry, that should be 18 of the English, where, under the heading of "Allocation of Internees", Duerrfeld gives figures on the manpower employed:

"Thirty to forty percent are not working on the building site as they are still engaged in preparing Camp IV or else they are ill. By erecting further fences in the precincts of the factory it ought to be possible to reduce the number of sentries. The proportion of watchmen and employed internees must be fixed at a ratio of 1 to 40."

The Prosecution offers, as Exhibit 1502, NL-10945. Here again the Court's attention is particularly called to the attendance list of the meeting and to Farben's interest in the problems of Auschwitz, the town of Auschwitz and the concentration camp Auschwitz. The Court's attention is also drawn again to this document where page 5 of the English is missing and will be supplied as soon as we can get it to you.

The Prosecution offers NL-11141 as its Exhibit 1503. It calls

attention to page 30 of the English and 63 of the German where, under the heading "Manpower Situation", it is stated that:

"At present there are about 17,000 workers, of whom 10,500 are engaged in construction work, 1,200 in assembly work, and 2,300 are working in general plants. When using Frenchmen and Belgians, it was disturbingly noticeable that only a very small percentage returned from leave."

And on page 32 of the English and 67 of the German, under the heading "Employment of Prisoners", it is stated:

"It was arranged with Obergruppenfuehrer Schmitt, acting as Deputy for Obergruppenfuehrer Pohl, that by 1 June the number will be raised to 5,000 and later on to 6,000." They are referring to the concentration camp inmates.

The Prosecution offers NI-10946 as its Exhibit 1504, and calls attention, again, to the attendance at the meeting which appears on page 41 of the English and 91 of the German. While it isn't relevant to the issues here because it only appears in the Index, some of the index figures are incorrect, and the ninety-five thousand Reichsmarks which appears in the Index—the ninety-five million should be ninety-five thousand. The three million should be 3,017,000.

The Prosecution offers NI-11142 as its Exhibit 1505, and calls attention particularly to page 45 of the English and 97-98 of the German, where, under "Discussions on the Loss of Workers Failing to Return from Leave", it is stated:

"Duerrfeld suggests that, in view of the compulsory recruitment in France, the workers be supplied with a clearance from the Armament Inspection which will protect them against removal to other German concerns."

NI-10947 is now offered as Prosecution's Exhibit 1506. Here again it is offered to show the attendance list in the discussion of Auschwitz appearing on page 52 of the English and 109 of the German.

The Prosecution offers now NI-5666 as its Exhibit 1507, and calls

attention to page 55 of the English and 111 and 112 of the German. This is a meeting of the Central Planning Board, attended by the defendants Krauch and Ambros. It is stated, on page 55:

"The extension of Auschwitz for 20,000 tons of Buna for which work is already under way requires that:

"1. Further withdrawal of labor from Auschwitz will be stopped and a transfer of workers from the construction sector to the erection sector can be made."

It states below that two hundred workers of the other plants have already been placed at the disposal of Auschwitz by compulsory transfer within the I.G.

Under point 3 it is stated, and I quote:

"The area of Auschwitz be pacified. This necessitates the providing of weapons, hand-grenades, machine-guns, and ammunition, for the purpose of arming the crew and the assignment of Landeschutz (regional defense), approximately 2,300 men. Action with regard to the regional defense assignment has already been taken. It is to be speeded up. Additional inmates from the Auschwitz concentration camp be furnished."

The Prosecution offers NI-109408 as its Exhibit 1508, which is again a TNA meeting, and attention is called only to the appropriation of funds and the attendance at the meeting.

The Prosecution offers NI-11143 as its Exhibit 1509, the minutes of a construction conference at which Mr. Ambros, Duerrfeld and Bueterfisch were present. We call the Court's attention to page 66 of the English and 129 and 130 of the German. Under the heading "Labor Requirements" it is stated:

"On this occasion the employment of prisoners was also discussed. There are 6,500 prisoners in the camp, of whom 5,400 are actually employed."

Further down it is stated:

"An increase of staff is hampered by the difficulty of finding accommodation. It is to be expected that an additional 1,000 prisoners

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and 1,000 English prisoners of war will arrive."

The Prosecution offers NI-10949 as its Exhibit 1510, which is the minutes of a TEA meeting, and I just call the Court's attention to the attendance list and the appropriation for Auschwitz.

The Prosecution offers NI-11144, as its Exhibit 1411, and calls the Court's attention to page 80 of the English and page 154 of the German. Under the heading of "Employment of Prisoners" it is stated:

"It is endeavored to obtain 7,200 prisoners for employment. Prisoners are also being employed in the branch building sites at Guenthergrube and Janina."

As Prosecution Exhibit 1512, NI-10821 is offered in evidence. This is a letter from Defendant Ambros to the members of IG-Auschwitz Construction Conference, to Buetefisch and Duerrfeld. It merely suggests the termination of the construction conferences since they are going from construction into production.

NI 1905 is offered as Prosecution's Exhibit 1513, without comment.

NI 317 is offered as Prosecution Exhibit 1514. The Court's attention is called to page 90 of the English and 166 of the German. Here, Fohl describes to Himmeler the Camp III site stating:

"Camp III includes all outside camps attached to industrial establishments in Upper Silesia which, however, are located at considerable distances from each other. At present, it consists of 14 outside camps with a total number of approximately 15,000 male inmates. These labor camps are also surrounded by the usual wire fence and have also watch towers. The largest of these labor camps is in Auschwitz, attached to the I. G. Farbenindustrie AG. It has, at present, 7,000 inmates."

The next document appearing in the index is NI 7572 and is already in evidence as Exhibit for the Prosecution 479. No comment with respect to it is to be made at this time.

The Prosecution offers NI 11145 as its Exhibit 1515, without comment.

The Prosecution will now call the witness.....

THE PRESIDENT: That completes Book 77?

MR. MINSKOFF: That completes Book 77, Your Honor.

If it please the Court, the next witness will be Mr. Spetter of Dutch nationality. The Prosecution offers, at this time, the affidavit of Mr. Spetter in evidence. It is NI 12383 and is offered as Prosecution's Exhibit 1516, to be added to Book 75.

THE PRESIDENT: We do not have it.

MR. MINSKOFF: I am just informed that it was handed in this morning and is probably in the offices - in your own offices.

THE PRESIDENT: Will you send the messenger and see so we can get it in our books?

In the meantime, you can go along, if you care to.

JUDGE MORRIS: May I have a description of the numbers of that exhibit again?

MR. MINSKOFF: I'm sorry, sir.

JUDGE MORRIS: May I have a description of the numbers of that exhibit again?

MR. MINSKOFF: That's 1516 and is WI 12383.

THE PRESIDENT: And in what book would it go, please?

MR. MINSKOFF: That would be added to Book 75, Your Honors. The German was distributed to the defense last Saturday. It's just the English that was held up.

JUDGE MORRIS: I have it in the back of my book.

THE PRESIDENT: I think we all have it.

MR. MINSKOFF: Fine.

DR. SEIDL (Defense Counsel for defendant Duerrfeld):

Mr. President, last Friday the prosecution announced that four witnesses would be examined today. In the meantime, we have received copies of the affidavits of these four witnesses and have seen that these affidavits were prepared three or four days ago, here in Nurnberg. Under these circumstances, I make application that these affidavits not be accepted in evidence by the Tribunal, but, in view of the fact that the affidavits have been prepared only a few days ago, the Tribunal request that the direct examination of the witnesses be carried out in the court room. There is no reason that I can see why an affidavit should be offered in evidence here if the witness has been here for several days and there is the possibility to have him examined before the Tribunal. The principle has been held in all military tribunals, up to now, that the best evidence should be taken if there are various methods of evidence available. The best evidence is the direct examination of the witness himself, and I cannot see why in this case there should be a piece of paper between the wit-

ness and the Tribunal, since the witness is here himself.

Mr. President, I should like to add that these four affidavits are a typical example of the fact that, with the aid of such affidavits, conclusions and statements from hearsay and personal opinions are included which would certainly not be permitted to come into the record in the same form if the witness were examined.

MR. SPRECHER: Mr. President, Dr. Seidl, who was present in the first case, knows as well as any one else in this courtroom that hearsay was not excluded from that case and that there are findings in the IMT decision which are based on hearsay. So much for the last part. I don't think that there's any help at this time in raising that issue as a collateral issue in connection with another old problem here which is this whole question of having affidavits introduced as a means of clarification in this record, as a means of giving advance notice to the defense counsel, and as a means of conserving Your Honors' time. If there's anything you would further like to hear on the matter, we would be glad to give it, but we don't consider that anything new whatsoever has been raised.

THE PRESIDENT: This objection presents the same question that has been repeatedly before this Tribunal, and we think it is sufficiently clear that we have ruled that the prosecution may use affidavits in evidence. As to any advantage being taken of the defense by reason of the use of affidavits, the situation is really quite the contrary. Counsel for the defense is in better situation to protect the interests of their clients when they have the benefit of having had an affidavit in their possession for the length of time required by the rules of this Tribunal than they would be if they were presently and immediately confronted with the necessity of conducting a cross examination at the end of the examination in chief. The Tribunal is not impressed with the thought that this deprives the defendants of any substantial right. As to the effect of conclusions, opinions and hearsay, that is quite a

different matter. As we have observed before, the basis, for some of those rules of which you are all more or less familiar is that evidence of that character may be harmful when it goes before a jury of laymen. We can assure you again that this Tribunal considers itself competent to distinguish between evidence that has no probative value and evidence that has probative value.

The objection to the introduction of the exhibits is now overruled.

The prosecution may call its first witness.

MR. LEISKOFF: Mr. Spetter.

THE PRESIDENT: The Marshal will bring in the witness.

(ISAAC SPETTER, a witness, took the stand and testified as follows:)

The witness will remain standing for the purpose of being sworn and raise his right hand. The witness will say "I" and state his name:

THE WITNESS: I, Isaac Spetter.

THE PRESIDENT: The witness will now repeat after me:

Swear by God, the Almighty and Conscient, that I shall speak the pure truth and shall withhold and add nothing.

(The witness repeated the oath).

The witness may be seated.

Mr. Witness, has the use of the signal lights on the witness stand been explained to you?

THE WITNESS: Yes.

THE PRESIDENT: May we ask now that you make your answers brief, direct and to the point as possible?

THE WITNESS: Yes.

THE PRESIDENT: Do not feel called upon to volunteer information. If additional questions are desired, counsel will ask them and then you will be given an opportunity to answer.

THE WITNESS: Thank you.

THE PRESIDENT: The Prosecution may proceed.

DIRECT EXAMINATION

BY MR. HENSKOFF:

Q. What is your full name?

A. Isaac Spetter.

Q. And where do you reside?

A. I live in Amsterdam.

Q. With respect to your affidavit, Prosecution's Exhibit 1416,
are there any corrections or additions you wish to make at this time?

A. No.

Q. No questions for the prosecution. The witness is with the
defense.

THE PRESIDENT: The defense may cross examine the witness.

CROSS EXAMINATION

BY MR. SEIDL (Defense Counsel for defendant Daerrfeld):

Q Witness, when did you come to the camp of Monowitz at Auschwitz?

A I have never been in Auschwitz itself, in the main camp. I have only been in Monowitz.

Q What was your first job in Monowitz, or rather, in the I.G. plant?

A I worked there in a commando as a carpenter.

Q Were you working in a work shop or outdoors?

A Mostly in the open, in the winter, and it was very cold.

Q How many prisoners were there all together in this detail?

A I would say about forty.

Q In addition to the prisoners, were there German workers and other foreign workers doing this work?

A There were different nationalities. The most of the heads of the different sections were Germans. Outside of that, there were other nationalities, such as Ukrainians, etc. French, too.

Q From your affidavit I have gathered that you had to prepare the wood work for the refrigeration installations. May I say that that was not a very exhausting work?

A The case is, of course, that I was somebody who had never done any manual labor and moreover, I didn't have enough to eat.

Q Then later you came to the so-called wood-carrying detail. What work did you have to do there?

A We had to carry the heaviest building materials around, among others heavy cement plates. Four men carried one plate from the train to the place where it had to be used.

Q Now, I come back to the carpenter detail. Were you working for I.G. Farben or for one of the two hundred firms which were employed to construct the plant?

A It was the I.G. Farben itself. I saw several of the blue prints and on those blue prints was printed "I.G. Farben-Auschwitz."

Q Witness, can you give me the name of the foreman who was in charge of this carpenter detail?

A No.

Q In your affidavit you say that you yourself saw ten selections. Where did you see that, and when did that happen?

A I saw several selections in the so-called sick bay and in the camp itself, too.

Q Who performed these selections in the hospitals?

A The SS Doctor.

Q And how many persons, in your opinion, were selected at that time?

A I'll talk now about the one time I remember very distinctly in the sick bay. There were 120 people in the transport. I saw them go away.

Q Did I understand you to say 420?

A 120.

Q 120. When was that?

A It was about March, 1944.

Q And all of these people had been patients in the hospital before, is that right?

A You couldn't call them exactly patients, but they were all people who had worked to their last for I.G. Farben and were exhausted.

Q Witness, I want to know from you whether these 120 people who, in March, 1944 were selected in the hospital - whether they had been lying in the hospital as patients before that?

A Yes.

Q If it is true that this selection was entered in the sick book, then these 120 people must be entered in the book.

A I was just another prisoner there. I don't know anything about how they were brought to the gas chambers or how it was administered.

Q In your affidavit, you say that Dr. Waitz advised you not to enter the hospital.

A That's right.

Q When did he give you this good advice?

A End of January or beginning of February, 1944.

Q Then you did not follow his advice. You went to the hospital anyhow, is that right?

A No. If you read my affidavit exactly you will see there that I first followed his advice and did not go, but then later on I got sick, and when I was unconscious I was brought into the sick bay.

Q Then at a later time you came to the cable detail, witness?

A Correct.

Q Is it true that the work consisted of pulling a cable, together with other prisoners, which went over a number of rollers?

A Yes, first, we had to dig the ditches in which the cable was going to be put.

Q Yes. Can you remember what the diameter of this cable was which you laid? 5 centimeters? Six? Three?

A I have had no technical education. I don't know exactly.

Q Then when did you come to the bookkeeping detail, witness?

A About the middle of October, 1944.

Q And what was the work in this detail?

A I had to check the figures in the bills that were sent by the different firms to I.G. Farben to see whether the amounts were exact.

Q Witness, I will come back to the cable detail. Is it true that the chief capo of this detail was a Dutchman?

A This commando was sub-divided in smaller commands and several capos were heads of each of the smaller units, but the head of the whole thing was actually a Hollander, an ex-Marine officer of Holland.

Q Under these circumstances, I may, no doubt, assume that since a Hollander was the chief capo in this detail, the prisoners were not mistreated.

A No, that's not correct. The chief capo was very rarely present at actual work. He walked around mostly with the people who

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A No, that's not correct. The chief capo was very rarely present at actual work. He walked around mostly with the people who

came down from the I. G., and the higher officials.

Q But you could always go to your fellow-countryman with a complaint if you thought you were being unjustly treated?

A It's very clear that you have not been in a concentration camp.

Q Witness, the chief capo was a fellow-countryman of yours, a former Dutch officer. Where did he live? Did he live in Camp IV just as you did?

A There were special blocks for the higher functionaries among the prisoners in the camp who had a little bit more comfort than the other common prisoners. He lived in the camp, of course.

Q Then, in any case, you had an opportunity to talk to him and to complain to him if you thought you were being unjustly treated, and then it was up to him to talk to your immediate superior?

A Then I would have to explain to you exactly how the situation was. Our kapo had very little contact with the people under him. A chief kapo was something so high it was terrible -- too high to have anything to do with the common people.

Q Now I come back to the bookkeeping detail. How many prisoners were there in the bookkeeping detail where you worked?

A There were two accounting commandos. One was called the loan administration and the other was the so-called checking of bills. I was in the bill checking commando and there were about 43 people.

Q Of these 43 people how many were prisoners?

A They were all prisoners.

Q All were prisoners? And how many prisoners were in the loan detail, in the wages detail?

A I don't know exactly but I think it is about the same amount.

Q Witness, may I say at this time you certainly had no work that would exhaust you?

A If I say yes on this you have to consider the fact that I was the exception working there and there were thousands of others who had to work too hard all the time.

Q In your affidavit you said that it took a very long time before your hands were sufficiently warm in the winter to be able to write. In this connection I must ask you is it not true that in the barracks in Camp IV where you were housed there was central heating?

A Central heating is a beautiful idea, but you must understand that there was even snow on the floor and water could freeze there very easily.

Q But you cannot deny the fact that in every barracks in this camp there was central heating and that I.G. Farben had done everything possible to see to it that the prisoners were kept warm.

A I don't believe that I.G. did this out of human consideration but only because they wanted to profit as long as possible from the human

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A I don't believe that I.G. did this out of human consideration but only because they wanted to profit as long as possible from the human

beings they had as their laborers.

Q But you haven't answered the question. I have asked you whether in every barracks there was central heating. You can answer yes or no.

A There was one conduit in every barracks if you call this central heating.

Q How many prisoners were there in such barracks as the one in which you lived, witness?

A When I arrived in the camp in 1943 I was brought to Block 22 and there were 310 others. I have not been very often in other barracks because I was too weak to walk in the evening after my work but I have seen other barracks and I know that all of them were overcrowded.

Q In your affidavit you mentioned an I.G. man named Walter or Welter. What was his name?

A I believe he was called Malzer.

Q Where did this man work?

A He was one of the German I.G. employees in the bill checking office.

Q In your affidavit you also mention a letter from engineer Murr. Can you tell me when this letter was written? Do you remember the date?

A No, I don't know the date.

Q Was it written at the time while you were there or had it been written earlier? Did you find it in the files?

A It was a red copy of a letter. There was no heading. I don't know the date but it was signed, not with his signature, but it was typed under there - I.G. Farben A uschwitz.

Q You do not know whether the letter was written in 1941 or 1942 or later or earlier?

A No.

Q Can you give us the contents of this letter once again, witness? Just the contents, the subject?

A I don't know it exactly —

Q But you can tell us what the contents were? The whole letter? What did the letter say, witness?

A In the first place the working capacity of the prisoners was much too low, about 80% below that of other normal workers, and something had to be done on this. In the second place there was something about they could work too when it was 15° below zero.

Q Now, witness, you say that in the opinion of the letter writer the performance of the prisoners was 80% below that of other workers and that something had to be done about it. Did the letter say what suggestions were made to increase their performance or any suggestions made to the work of prisoners being dispensed with altogether?

A No.

Q You also referred to an Amsterdam chemist, Benima, in your affidavit and you say that a letter was given to an I.G. superior. Can you give me the name of this superior?

A No, and I will have to add now that I didn't personally give this letter to this I.G. functionary. There was a man in the camp who was in the same commando as Benima and I have given this letter to him.

Q Did you read this note?

A No, but I talked with Benima for a long time when he knew that he was going to be gassed and when he decided he was going to do this. I knew, of course, what this letter was all about.

Q But you did not read it yourself?

A No, I did not read it.

Q Witness, then how do you know that the superior had written to the SS?

A I do not know, of course, whether this man did — the only thing I know is this functionary has promised that he would write about it.

Q Then is it not true what it says in your affidavit at the end of #6 and I quote: His superior wrote in fact to the SS. In spite of that

Benima was gassed."

A I was told by the man who brought this letter to this I.G. man that he had promised that he would write to the SS and I saw the result which was that my comrade went to the gas chamber.

Q Witness, how many Hungarian children did you yourself see in the I.G. plant?

A I don't know an exact figure. I saw many commandos with children of 12, 13, 14 years. I remember, for instance, a commando where they were carrying heavy stones.

Q How many children? Witness, you must be able to answer this question. How many children were in the I.G. plant altogether? You must be able to tell me - 5, 10, 15, or 20?

A There must have been at least 150 or 200 but I do not know an exact figure.

Q What was the age of these children?

A What was the question, please?

Q What was the age of these children? 12, 15, 18?

A Certainly not over 14 - a variance of 12 to 14.

Q Witness, do you know that actually for juveniles over 14 there were courses in the I.G. plant where they could be trained as electricians, locksmiths, etc.?

A No, I know nothing about that.

Q No further questions.

DR. DRISCHEL:

Q Witness, can you give us the name of the Dutch Chief Kapo in the cable Aetm 1?

A Snelle.

Q Can you give us his address?

A I believe he is now an officer of the Dutch Army in Australia.

Q Was his name Van Vollenhove?

A I believe he was of nobility. I think he had a second name.

Q Well, what is the right name?

A I think it was Snelle van Vollenhove, but he was never called by both of these names.

Q Then my final question. Do you belong to any political party?

MR. SPEECHER: Objection to the answering of this question.

DR. DRISCHEL: Your Honor, may I say something. In the last few days the Prosecution have on their own initiative been asking witnesses whether they belonged to the Communist Party or similar organizations abroad. It seems to me suitable in this case where Prosecution did not ask it to ask it to determine the creditability of this witness.

THE PRESIDENT: I shall say to Counsel that the Tribunal does not regard this question as calculated to block any fact that is of any interest to it. But you gentlemen have taken positions and changed positions with reference to this question and the Tribunal now is going to over-rule the objection. If you wish to ask the question in view of the fact that the Tribunal does not consider it of any importance whatever we shall permit the witness to answer because of the prestige established in the course of this trial.

BY DR. DRISCHEL:

Q Witness, will you please answer the question?

A I will answer the question, of course, but I want to remark first that as a Dutch citizen I follow the constitution of my country and that constitution of my country guarantees my political and religious

freedom. I am no Communist. I belong to the Dutch Democratic Party.

Q I should like to ask you once more concretely, Mr. Stetter, is it not true that you belong to the Dutch Communist Party?

A I do not lie. I am not a Communist.

Q Thank you, Mr. President.

MR. DUBOIS: May it please the Court. I haven't been here when some of these questions have been asked but as I understood it the Prosecution began asking questions with respect to political organizations after the defense had asked such questions after we had objected and after when at least once it had been over-ruled. It seems to be that at least in the future, particularly in the light of the Tribunal, these questions ought to be ruled out.

THE PRESIDENT: The Tribunal will rule on objections as they are made. There is nothing now before the Tribunal. We only permitted this question to be asked and answered because the Tribunal did not wish to place itself in the position of denying to counsel on one side what had been granted to the other, and in view of the fact that the parties had shifted positions and made objection to each other's combat, in this regard the Tribunal repeats that it does not consider this fact of any probative value whatever and if counsel for the defense and prosecution wish to have regard for conserving time they now may abandon that inquiry without any loss of prestige or position because of former pursuit of the subject.

DR. DIX: If I may I should like to comment very briefly on the question just discussed.

THE PRESIDENT: Counsel, we always are glad to have pertinent observations of counsel when matters are pending before the Tribunal. There is no question before the Tribunal. The remarks of the Prosecution were not to the point and in the interest of time we are going to ask you to proceed to the interrogation of this witness. If you think any rights are involved that you wish to preserve you may raise them when the

question next arises, if it does arise.

BY DR. DRISCHEL:

Q. Witness, I wanted to ask you whether the barracks did not consist of several rooms?

A. Yes.

Q. Then it was certainly the case that in each room there was at least one radiator?

A. There was one conduit along the wall of the whole block. The block was divided into one compartment where the Kapos were and that was roomy and in the rest of it the prisoners were pressed together.

Q. Then perhaps the facilities were not heated adequately some times or often?

A. I have told you already that it was possible that ice was formed on the ground - on the floor.

Q. But now I am asking if there was this heating unit through the whole barracks it should be adequate. Most barracks have no other form of heating. I am asking you if this heating unit was adequately heated always?

A. It was, of course, insufficient and the people on the other side of the room from where the conduit was were very cold.

Q. You fled to Switzerland when you left Holland for the first time. Then you were ejected from Switzerland. Did you tell the Swiss officials about your past and the fate that might befall you?

MR. SPEECHER: Mr. President, we would like to move to have the speech of counsel, the first two sentences, stricken with respect to the question which was thereafter asked. We would like to have him state his purpose if he can find out if there is anything more than we can see on the face of it apart from another attempt to get in this issue.

DR. DRISCHEL: The affidavit says that the witness was expelled from Switzerland and I am interested to know how this happened?

THE PRESIDENT: Whereabouts, counsel, is it in the affidavit about

him being expelled from Switzerland?

DR. DRISCHEL: On page 2 of the German it says - I quote - page 1 of the English - "We then decided to conceal our child in the house of good friends of ours in Holland and to flee to Switzerland. Following the enormous strain of this illegal journey to Switzerland we were sent back to France by the Swiss Douane in March 1943."

THE PRESIDENT: Now, counsel, will you restate your question for the benefit of the witness and Mr. Witness do not answer until there has been an opportunity for an objection.

BY DR. DRISCHEL:

Q. I asked you, witness, whether before you were expelled from Switzerland you told the Swiss officials about your fate and the future which you had to expect in France.

THE PRESIDENT: You may answer.

A Yes, I told this to the Swiss officials and if you have any interest in this business you can find out that thousands of people were sent back in the same way into the occupied territory.

Q Witness, you mention an I.O. official named Vogel in your affidavit. Can you describe him briefly?

A He had a very strong face. He had a thin face, dark eyes, gray hair.

Q On the advice of Dr. Weitz you worked although you were sick. That happened frequently, no doubt, that prisoners continued to work although they were sick for the reasons which Dr. Weitz gave you?

A Yes, it happened fairly often.

Q Now, my final question is this: As a Hollander you quite rightly worked for the English Intelligence Service during the war. I asked you, you know that the enemy, that is to say in this case the German Government or military authorities had the right according to the laws of war to punish you very severely, perhaps even with the death sentence?

A I have always taken that risk when I worked for the Dutch Resistance Movement. The inhumane exploitation by I.G. Farben was worse than that.

THE PRESIDENT: The Tribunal will rise for its recess.

THE JUDGE: The Tribunal is again in session.

THE PRESIDENT: May we have the attention of counsel just for one moment? With reference to this matter of asking witnesses on the stand their political affiliations, the Tribunal would like to make its position perfectly clear to you. As we recall the record, the first time that that question arose it related to some punishment that some witness had been subjected to, according to his affidavit, for his political views. That made the inquiry proper as to what his political views were. It was proper to ask that question on cross-examination. That is the reason the objection was over-ruled at that time. Since that time, counsel for the Prosecution and Defense alike have been asking questions of witnesses as to their present political affiliations or past political affiliations that bore no relationship to any such matter as it was presented in the first instance. We have regarded those questions as improper all the way through; we still so regard them. We further feel that the parties here are on about an equal footing with respect to the inquiries that have been made. In other words, neither of you are at any disadvantage because you have asked the questions or objected or have not objected. We are going--except in the single instance to which I first referred--to treat all these questions as mere surplusage in the record and ignore them. And we ask you now, gentlemen: unless it is, under the peculiar circumstances of the case, proper cross-examination, please desist from it. That applies to Prosecution and Defense alike.

Counsel may proceed with the cross-examination.

ISAAC SPETTER - Resumed

CROSS-EXAMINATION - (Continued)

BY MR. SPETTER (Counsel for defendant Duerrfeld):

Q. Witness, are you able to tell me as exactly as possible at what time you were housed in the hospital?

A. I think this must have been from the end of March until the end of April--until the last weeks of March anyhow.

Q Witness, do you know that the foreman Seliger, of Farben, from the carpenters' detail, was arrested by the Gestapo because he illegally delivered mail and other food to the prisoners?

A I don't know about that, but I would take it for granted that there were still decent Germans with the I.G. Farben.

DR. GLIDE: I have no further questions.

THE PRESIDENT: Any further cross-examination?

BY DR. THARANDT (Counsel for defendant Duerrfeld):

Q I have only two or three questions.

When you were speaking about the chief Kape of the cable detail you said that he was of such a high position that he couldn't worry about the troubles and cares of a small prisoner. Is that correct?

A Up to a certain extent it is correct.

Q Do you believe that a Farben foreman or employee of Farben could worry about the cares of a prisoner--if a man from their own ranks couldn't worry about them?

MR. MINSKOFF: Objection is made to the form of the question, say it please Your Honors.

THE PRESIDENT: Objection sustained.

DR. THARANDT: I have no further questions.

THE PRESIDENT: Any further cross-examination? (No response)
Any re-direction examination?

MR. MINSKOFF: No re-direct.

THE PRESIDENT: The witness is excused.

Call the next witness.

MR. MINSKOFF: Mr. Pfeiffer, of French nationality.

THE PRESIDENT: The Marshal will bring in the witness.

MR. MINSKOFF: May it please the Court, the Prosecution would like to offer at this time Document SI-12384, as Prosecution Exhibit 1517. That should be added to Document Book 75.

(PHILLIPS PFEIFFER, a witness, took the stand and testified as follows:)

THE PRESIDENT: The witness will remain standing for the purpose of being sworn, raise his right hand, say "I" and state his name.

WITNESS: I, Phillipe Pfeffer...

THE PRESIDENT: And now repeat after me: ...solemnly and sincerely declare and affirm that the evidence I shall give shall be the truth and nothing but the truth--"I am very sorry, witness, I administered the wrong oath. I misunderstood; I thought you were English.

I shall state the oath and then ask you when I have done so to say "I swear." You will listen.

Do you swear to speak without hate or fear, to say the truth, all the truth, only the truth? With your hands raised, you will say "I swear."

WITNESS. I swear.

THE PRESIDENT: You may be seated.

PHILLIPE PFEFFER

DIRECT EXAMINATION

BY A. A. INSKOFF:

Q Mr. Pfeffer, what is your full name?

A Phillipe Pfeffer.

Q And where do you reside?

A At present I live in a sanatorium in Switzerland, at Davos.

Q With respect to your affidavit (Prosecution Exhibit 1517) are there any corrections or additions that you wish to make at this time?

A Yes; I would first make a correction on page 3, in paragraph 5, on the fourth line: "Eosa Montbellier, under whose supervision I worked in the solvents room..." I would like to change the words "solvents room" to "aldehyde plant."

And I would like to add to my affidavit that I am convinced that Dr. Ambros knew that the Jews who were in the Honowitz camp couldn't get away alive from that camp, and I base this on a meeting I had with him. That was either in November or the beginning of December 1944, when he came to the aldehyde plant where for about ten minutes he talked to me.

Among other things, he first asked foreman Montpellier, who accompanied him, who I was. He was very amazed that an inmate could be in a laboratory. And then, when he discovered that I was a Frenchman and a non-Jew he said to me: "You have got good luck. You most probably will get out of this camp alive; and in that case you might perhaps be able to use the work in the aldehyde plant for the continuation of your thesis." Thus, with these words, he emphasized that this opportunity was given to me only because I was a Frenchman and not a Jew. That is all.

MR. RINSKOFF: No further questions to the witness. The witness is with the Defense.

BY DR. DRISCHEL:

Q. Dr. Pfeffer, is the original of your affidavit written in the German or in French?

A. It was made in German.

Q. That is you speak German?

A. Yes, I speak German very well.

Q. Wouldn't it be better if we conversed in German?

A. No, I am sorry; I want to talk in French.

Q. As to the contents of your affidavit. First of all, as to your activity in the glass store, and in the methanol plant under Dr. Frick. Witness, is it true that you worked in the solvents room, and that you worked quite independently?

A. Yes, that's correct, and in the solvents room I was always alone, and I was always free. I was provided by Dr. Reichhardt of laboratory A., and by Dr. Frick of the Chemical store and the Glass store.

Q. Then you were working there as a chemist and as such you were treated by your superiors as a chemist; isn't that right?

A. By my superiors I was treated as a chemist, but that case did not happen everywhere, and not always when I worked as a chemist. I did not quote in my affidavit several cases where I personally was beaten by the foreman Kalms of the camp only because I carried away one single time, a half kilogram of permanganate, saying that I had a sore throat, and that I wanted to use that kilogram of permanganate to gargle. He took that little bag of kilogram of permanganate from me and beat me.

THE PRESIDENT: Mr. Witness, please. Now it is very important that you make your answers as brief and direct as possible. You need not concern yourself about whether your answers are sufficiently full. If they do not answer the question, counsel may ask additional questions. Do not feel called upon to volunteer or extend your remarks beyond an answer to the question that was asked of you.

A. I understand. I was asked a question by counsel if I was treated as a chemist. I was not always, and not always by all of the personnel. The only one who treated me as a chemist was Dr. Spacnig. All of the others looked upon me only as a camp prisoner, a "Hacttling".
BY DR. DRISCHEL:

Q. Witness, this foreman Kalms that you mentioned just now; you say about him that you would ask him about the text of a bill which appears, and which is mentioned on page 3 of your affidavit, a bill for a shipment of methanol. Would you please tell me what concrete answer Kalms gave you?

A. I never mentioned him. We had that methanol several times among us, and it was present in various of the methanol plants and of the glass store. Mr. Kalms never had that methanol served to the band of Jews; it was used in May, June and July for the ditches that were dug in Birkenau camp. Those words which I quoted in my affidavit were his own words, which forever he repeated at various times.

THE PRESIDENT: Now, Mr. Witness, is it necessary for us to admonish you again? Directly answer these questions that are propounded to you, and do not discuss related matters unless you are asked about them. You are imposing too heavy a burden upon the record, and translating and reporting staff.

A. That was an answer I gave to the question.

THE PRESIDENT: This Tribunal will determine for itself whether you have answered, or sufficiently answered the question. That is not your responsibility. Please bear in mind the admonition of the Tribunal and comply with it.

THE WITNESS: Very well, Sir.

BY DR. DRISCHEL:

Q. I would like to ask you, Mr. Witness, if Kalms told you, "If we produce properly then another few thousand Jews will go up in the air"? Do you want to say by that, that methanol was used for gassing or for

the destruction of Jews?

A. No, no; it was my reply it was used to burn the Jews in ditches when there was no more space in the crematory.

Q. That is after they had been killed, yet not in order to kill them?

A. No, once they had been killed; that is correct.

Q. Do you believe, witness, that these quantities which are mentioned here would be sufficient to burn corpses in these ditches of which you have spoken?

A. These quantities were the only ones were developed; I only saw a single bill, and since maybe 50 thousand liters of methanol, that in my opinion is sufficient to fill quite a big ditch.

Q. How do you know anything about the fact that these Jewish corpses were supposed to be burned in these ditches by methanol?

A. I was told that by Kalma about Dr. Reichhardt, who was in the laboratory, frequently in the months of May, June and July 1944.

Q. Isn't it true that methanol is also used for fuel purposes?

A. Methanol, of course, can also be used as a fuel.

Q. Then another question; after you worked in the solvent room you went into the Aldel factory, and you mentioned that your chief was Dr. Spaenig. Who else was there as the chief chemist of Farben?

A. At the Aldel plant there was only Dr. Spaenig who was the plant leader. There was a foreman Montpelier, a foreman Dunkelman, a foreman Reichardt, who were of the supervision.

Q. Wasn't there another chemist, Peinig, or something like that, by name?

A. No, I cannot remember him.

Q. What was your activity in the Aldel factory? Did you also work independently, more or less?

A. Well there, only there, I had independence which was almost absolute. That means that before I had no had it.

Q. When did your work start in the morning?

A. In the morning, I do not know the exact hour because I had no watch, but we left the camp when the sun rose, with a reveille, as well in winter as in summer.

Q. The laboratory itself, that is your room in the Aldel factory, was well equipped with everything and offered you an opportunity to work with all conveniences?

A. Yes, yes.

Q. You mentioned that you were denounced by a French civilian worker; you say that on page 4. Can you give me the name of that French civilian worker?

A. I do not remember it any more.

Q. Do you not know anything about his ultimate fate, - the fate of this French civilian worker?

A. I know that he was in the camp of the Free French, the free workers, and that, - I also know that he also with some other French workers was then transferred to the German camp which was on the other end of the Auschwitz plant.

Q. Who caused this transfer to be initiated?

A. I don't know, but I think it was the Gestapo at the camp for which he worked. He was afraid of his French comrades, because they had suffered so much, after so many denunciations.

Q. Dr. Pfeffer, previously you mentioned Dr. Ambros' visit?

A. Yes.

Q. Is it correct that Dr. Ambros interested himself very much in the activity in the laboratory and that he had you show him various tests in series experiments that you undertook?

A. No, he was a bit interested in the work I made. I showed him nothing. I only showed him a few apparatus which I had installed with catalysers.

Q. Did you speak about the I.G. organization bit to him?

A. Yes, that's possible. It's possible only shortly, only with a few words.

Q. Is it true that Dr. Ambros even told you to continue to experiment and that he told you that you might advance as a result of your work?

A. Yes, that's absolutely correct but, as I said in the beginning of my additional statement I mention I showed this to him before.

Q. Was the discussion with Dr. Ambros on an outspoken friendly basis? Isn't it true that he said you may write your thesis about it in France?

A. Dr. Ambros, besides the words, I quoted in the beginning and saying that I had it was good for me not to be a Jew, that perhaps I might get out and he made a very good impression on me.

Q. Did Dr. Ambros make these statements in the presence of Dr. Spaenig or in the presence of Foreman Montpellier?

A. Dr. Spaenig was sick in the hospital at that time. There were two more doctors whom I did not know, who accompanied Dr. Ambros and Foreman Montpellier in his capacity as Deputy for Dr. Spaenig -- by the way, it was a Sunday and there was nobody else there.

Q. Dr. Pfeffer, may I refresh your recollection and may I put to you that you may be mistaken? Dr. Spaenig was present for Dr. Ambros visited Dr. Spaenig in the laboratory.

A. I am sorry; Dr. Spaenig at that time was in the hospital. There was only Foreman Montpellier present, and that's absolutely certain.

Q. Did not Dr. Ambros see you at a later time in the laboratory? Did he render one or two visits?

A. He was twice in the laboratory, but I saw him only once and that was the time when I talked to him.

Q. Dr. Pfeffer, do you know that Dr. Spaenig was a very close associate of Dr. Ambros, too?

A. I didn't know that before. I know it now.

Q. I asked you because previously you mentioned that Dr. Spaenig was very humane and considerate to you and treated you very kindly and because I had assumed that you had the impression that Dr. Ambros met you with this same kindness.

A. During the five minutes which the conversation with Dr. Ambrose there I told you that I have the impression there was an intelligent man in front of me but five minutes are not sufficient to really know somebody.

Q. Dr. Pfeffer, for the most time of your stay in Auschwitz, that is from the middle of February until Christmas of 1944, you were used in the chemical work?

... Yes, that's correct.

Q. How can you explain to me that during that activity in the laboratory you also know something about the fact that people were gassed in Auschwitz, and that especially because you say that transports came from Birkenau people were gassed in Auschwitz?

A. I mentioned in my affidavit that on page 4 that Dr. Spaenig as well as the other ones under whose supervision I worked knew more than any prisoner in any of the other camps. They themselves heard them and repeated several times that all of us would go into the fire and into the crematoria and this thing was permanent talk and everybody knew about it.

Q. If I understood you correctly then it was a general talk?

A. It was a certainty. Everybody heard it and the German doctors included.

Q. If you speak of a certainty, Dr. Pfeffer, one must have definite proofs for such an assumption but you said at the same time and in the same

breath, you said it was mere talk.

MR. MINSKOFF: We object to that, Your Honor, it is arguing with the witness. This is no place for it.

MR. SPRECHER: The question or rumor is a question of translation. What he is talking about is general circulation.

THE PRESIDENT: Then ask him directly what he knows. Keep out of the field of rumors as far as possible.

BY DR. DRISCHEL:

Q. Witness, did you, yourself, know anything definitely about the fact where and how these people were being gassed?

A. I know that with certainty because all my comrades who came with me did fail to return and we saw anyone who had come to Birkenau and Foreman Montpelier in person with Dr. Spaenig told me what I mentioned on page 3, paragraph 5, "you are an Aryan, the Jews will all go up in the air", and that was in the presence of Dr. Spaenig.

Q. Do you know who ordered the gassings and murders to be carried out?

A. I don't know who gave those orders. I only know they were executed and that was an SS order.

Q. Do you have any indications which might led you to assume that Farben wanted or promoted such measures?

A. Well, Foreman Montpelier told me several times that if he and the SS would not exterminate all of the Jews in the camp Farben themselves would be obligated to kill them because they didn't want a single Jew knowing the secrets of manufacture to get out of the camp.

Q. Witness, did you consider Foreman Krist a competent member of the Supreme Directorate of Farben?

MR. MINSKOFF: An objection to that question, Your Honor. That is, by the way, a legal question as to whether he is competent or incompetent.

THE PRESIDENT: Well, it's a proper subject of inquiry. Perhaps, counsel, it would be better if you asked him what he knows about the affiliation of the man inquired about in connection with Farben.

BY DR. DRISCHEL:

Q. May I put my question in compliance with the suggestion of the Tribunal? What was the position of this Foreman Krist?

A. He was a Deputy for Dr. Frick.

Q. Did he have an leading authority, to sign, to represent people, "Prokura," etc. in this plant.

A. I know only that he directed himself the glass store and chemical store in I street.

Q. Was he a member of the Vorstand of Farben?

A. I don't know.

Q. Witness, one further question. Did you ever notice anything about the odor which was supposed to have been perceived at Auschwitz in connections with the burnings?

A. I smelled that several times, yes, especially during the months of May, June and July when there was an enormous quantity of Hungarian Jews who arrived and who were burned in the open air.

Q. In the open air? That's after they had been killed?

A. Yes, who were dead but you could smell the odor only when they were dead and then they were burned.

Q. But you didn't mean the general odor of the crematoria?

A. Well, certainly it existed, too, but as I said, "especially". I used the word "especially," concerning the months of May, June and July when the crematoria were full and were in full blast.

Q. You mentioned furthermore in connection with your arrest around Christmas 1944 that Dr. Spaenig intervened for your release, but that he could not achieve anything, and you said on page 5, "Although Dr. Duerrfeld knew into what situation I had got, etc., he refused to help me." How do you know that Dr. Duerrfeld did refuse to help?

A. I received, as I mentioned on page 5 in the standing bunker several times I received little notes coming from Dr. Spaenig which informed me that was being done to get me relieved. He informed me that he addressed himself to Dr. Duerrfeld and that he did nothing to help me to get out and so

he knew that I was in the standing bunker.

Q. Dr. Pfeffer, there's a difference whether he didn't do anything, perhaps because he couldn't or whether he actually refused to do something. What do you want to express with your present statement compared with what you said in your affidavit? Did you then not know concretely whether Dr. Duerrfeld refused to help or whether he perhaps could not and for that reason did not help?

A. The only thing I know is that my situation was not fit at all and that he never did anything.

DR. DRISCHEL: I have no further questions, Mr. President.

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A. The only thing I know is that my situation was not fit at all and that he never did anything.

DR. DRISCHEL: I have no further questions, Mr. President.

BY MR. SEIME (Defense Counsel for defendant Duerrfeld):

Q Witness, how do you know at all that Dr. Duerrfeld knew anything about your situation?

A Dr. Spaenig wrote me that he addressed himself to Dr. Duerrfeld to get me out, to make them get me out; I know it from Dr. Spaenig.

Q You only have Dr. Spaenig's statement that he wanted to turn to Dr. Duerrfeld as the basis of your knowledge?

A Not that he wanted to address himself to Dr. Duerrfeld, but that he had addressed himself to Dr. Duerrfeld and that help was refused.

Q Did he tell you how he turned to him, whether he wrote to him or whether he spoke to him?

A Well, they were little notes that were sent to some one in the standing bunker.

Q Witness, a short while ago you mentioned Dr. Frick. Was he Dr. Spaenig's superior, also?

A No, that was another division. That was glass storage. I don't think that they were together.

Q Did you ever belong to the Detail 147?

A Yes, I was in the glass storage. I don't think that they were together.

Q Did you ever belong to the Detail 147?

A Yes, I was in the glass storage, glass magazine, under the supervision of Dr. Frick.

Q Did you know that the inmates of this Detail 147 sent to Dr. Frick, on Christmas of 1944, a card which reads as follows: "To Our Chief, Dr. Frick, with the best New Year's Greetings. Detail 147."

A Of Detail 147, which sent that card, I am quite certain that there were, among the thirty inmates of which this detail consisted, twenty-seven who knew nothing about it. There were perhaps Germans,

perhaps so-called SV's who worked as secretaries who sent the card to Dr. Frick. Dr. Frick personally sent to the crematorium an inmate, one of my best friends, a Czechoslovakian Jew who wrote a letter asking for civilian shoes for his family. That letter got into the hands of Dr. Frick and I was present when that old Jew, what was almost sixty years old, cried in front of Dr. Frick and asked him not to send the letter to the SS. Dr. Frick shrugged his shoulders and sent the letter. At first, they brought the Czech Jew in and then the SV, the German who worked as personal secretary of Dr. Frick, stayed in the camp and the Jew was sent to the crematorium. Dr. Frick knew perfectly well what the Jew had to expect if he were handed over to the SS.

Q Witness, how do you know that Dr. Frick himself reported this matter? Were you present?

A Yes, I was there. I saw the Czech Jew cry in front of Dr. Frick.

Q And how do you claim to know that Dr. Frick did know exactly what would happen to the Jew?

A He knew perfectly well that any suspicion of escape meant death.

Q I have no further questions.

BY MR. DIX:

Q I have only one question. You mentioned Dr. Pfeffer, the fact that you exchanged alcohol for food. I want to ask you, such business was transacted frequently in the Monowitz camp and in the plant, isn't that true?

A I don't know whether that happened often, but I think that if every inmate had to eat only what they were given they would all have been dead within a month.

A I didn't want to reproach you for that. I merely wanted to ask you.

THE PRESIDENT: Any further cross examination of the witness.

BY DR. GIERLICH:

Q Witness, in answer to the question of one of my colleagues you answered that you were present when Dr. Frick reported your Czechoslovakian friend to the SS. How did that happen? Did he telephone to the SS in your presence? Did you see how he wrote a letter? Did he call an SS guard or how did he do that?

A He made a phone call to the SS commando leader who arrived immediately to take that Mr. Stein - that was the Czechoslovakian Jew in question - and the German secretary of Dr. Frick to the bunker of the Monowitz camp.

Q Thank you.

THE PRESIDENT: Anything further, gentlemen?

Any Redirect?

MR. MINSKOFF: No redirect, Your Honor.

THE PRESIDENT: Then the witness is excused.

Call another witness.

MR. MINSKOFF: Eric James Doyle, British nationality.

MR. SPEECHER: Mr. President, will you remember to give us a chance to announce the program for tomorrow because there are quite a number of witnesses tomorrow?

ERIC DOYLE, a witness, took the stand and testified as follows:

THE PRESIDENT: Mr. Witness, will you remain standing and raise your right hand. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE PRESIDENT: You may be seated.

DIRECT EXAMINATION:

BY MR. MINSKOFF:

Q What is your full name, Mr. Doyle?

A Eric James William Doyle.

Q And where do you reside?

A In London.

THE PRESIDENT: Mr. Prosecutor, please, what is the exhibit number of this document, please?

MR. MINSKOFF: I am sorry, Your Honors. This is NI 12388 and the prosecution offers it in evidence as its Exhibit 1518.

THE PRESIDENT: And it will go in Book 75 also?

MR. MINSKOFF: That is right, Your Honor.

THE PRESIDENT: Go ahead.

BY MR. MINSKOFF:

Q With respect to your affidavit, Prosecution Exhibit 1518, are there any corrections or additions you wish to make at the present time?

A Nothing further.

Q That is all for the prosecution. The witness is with the defense.

CROSS EXAMINATION

BY MR. SEIDL (Defense Counsel for defendant Duerrfeld):

Q Witness, when did you come to Auschwitz?

A 18th of September, 1943.

Q Behind you there is a map. Would you please be kind enough to turn around and to tell me in what camp you were and whether you remained in that same camp? Please speak into the microphone when you answer.

A Camp VIII. I remained there the whole time I was there.

Q You never were transferred to Camp VI?

A No.

Q How many prisoners of war were in this Camp VIII?

A Approximately 1200

Q The camp was under the administration of a German Wehrmacht officer, is that correct?

A Yes.

Q Your medical care was taken care of by two English medical officers, is that also correct?

A That's true.

Q You also had an opportunity, through the mediation of the Red Cross, to receive parcels from home, isn't that also right?

A Yes.

Q You say in your affidavit that you had to work in mines if you did not volunteer for work. Who told you that?

A That was given out by the work master who came in to sort the men into different commandos.

Q You do not know the name of this foreman in question, do you?

A No.

Q What did you have to do in the Farben plant yourself? What work did you have to do?

A Carry pipes, heavy pipes.

Q Were there any other workers in this commando besides prisoners of war?

A Yes, eight or nine nationalities.

Q Then you worked together with these other workers?

A Yes.

Q And the prisoners did the same kind of work, is that right?

A On that particular commando, yes.

Q Witness, do you know that at no time of the operation of Farben in Auschwitz they ever produced gasoline?

A I remember them having a celebration for the first gasoline produced.

Q You want to claim that this was gasoline and not methanol?

A Yes.

Q And you maintain that even if I put to you that at no time did Farben in Auschwitz produce any gasoline?

A I am not a chemist, but motor cars run on it.

Q What kind of work did you do besides carry pipes in the Farben plant in Auschwitz?

A Fitting them.

Q And at that time again prisoners and other workers were used jointly, is that right?

A Yes.

Q Then I may say that the prisoner workers did the same type of work as did the prisoners of war and other workers in Farben, is that right?

A No.

Q Where was the difference?

A There were several kinds of workers in Auschwitz. Prisoners of war, civilians workers brought from other countries - I don't know whether they volunteered or what they did. There were also the inmates of concentration camps "lagers" who were working under close supervision and we didn't work with those workers of that lager but they were working all around us.

Q You also stated that prisoners collapsed in the Farben plant at Auschwitz. How many such prisoners did you see who collapsed?

A Many.

Q Witness, can you give me an approximate figure -- five, ten, or twenty?

A Counting all those I saw being carried home after the work was finished, I should say hundreds.

Q During what period of time was that? How long were you working in the Farben plant as a prisoner of war?

A From September until April 1944.

Q That is September 1943.

A September 1943.

Q Until April 1944.

A That is correct.

Q Did you yourself ever come to Camp IV in which those prisoners lived?

A Only outside of it.

Q Is it correct that there was a street running between the Camp IV, and the Farben plant on which large traffic moved?

A Would you repeat that, please?

Q I wanted to ask you, witness, whether you still remember that south of the Farben plant, and in the immediate vicinity of the north of Camp IV and the PW Camp, there was a big road with a lot of traffic on it, which led to the East, and which you had to cross when you wanted to enter the Farben plant?

A There was a road, yes, the other side of the main wire, I think, on H Street.

Q Did you see personally how prisoners were hanged in

Camp IV?

A I saw three men hanging in the gate of Camp IV approximately in February 1944.

Q Do you know why these prisoners were hanged?

A I didn't know there had to be a reason.

Q Then I want to tell you that it happened repeatedly - two or three times, - that inmates were hanged because they murdered their fellow prisoners.

MR. MINSKOFF: We object to that testimony.

THE PRESIDENT: The objection is sustained. Ask another question.

BY DR. SEIDL:

Q You say that these inmates had been hanged immediately on the gate, the entrance to Camp IV. Is it true that this spot could easily be seen from the road?

A Yes, quite easily.

Q Did you yourself ever speak to a member of Farban, an engineer, or a foreman, about the gas chambers that you mentioned?

A Yes.

Q Can you give me a name, particularly the name of a foreman of Farban with whom you spoke?

A He was an immediate foreman, I don't know his name, Rother, or something like that.

Q What did that person tell you, witness?

A He seemed to think that the inmates of the Lager were just nothing at all --

Q Please excuse me, witness, if I interrupt you. I do not want to know what he seemed to think, but I want to know what he told you.

A The exact words?

Q As far as possible; at any rate, give me the sense of what he said as far as possible.

A The people were no further use to Germany as workers, and therefore they must make room for new workers.

Q You say that in your opinion the concentration camp inmates had a life expectancy of two to three months. Does this expression "life expectancy" come from you, or who told it to you?

A Every word in there comes from me.

DR. SEIDL: I have no further questions.

THE PRESIDENT: Is there any further cross-examination of this witness?

BY DR. GIERLICH:

Q Witness, I have one question in regard to the hangings that you mentioned. You say that you saw those four corpses from the gate of the camp. Can you describe that to me a little more clearly?

A Quite easily. There were three, not four, and the men were hanging on the beam over the gate, suspended, I think, possibly 15 feet high, quite easily to be seen from the road on which I was walking.

Q Did I understand you correctly that there was an arch over the gate of the camp and that these dead bodies were hanging in the arch of the gate?

A Either an arch or a support, and they were hanging from that. They went directly over the gate.

Q You maintain that assertion, witness, even if I put to you that the exit of Camp IV had nothing over the gate, that there was no arch, that it was a double fence, and that on the outside of the two fences there was a gate that opened and it did not have anything over it? Is it possible, then, that you are mistaken?

A Not possible.

DR. GIERLICH: Thank you.

I have no further questions, Mr. President.

THE PRESIDENT: Any further cross-examination?

(No response)

Any redirect?

MR. MINSKOFF: No redirect.

THE PRESIDENT: Then the witness is excused.

(Witness excused)

Now, Mr. Prosecutor, you may make your statement with reference to tomorrow's program.

MR. MINSKOFF: Mr. Hartland, - who was to be on this afternoon, will be our first witness tomorrow morning, - of British nationality. Dr. Vitok and Professor Spatoin, both of Czechoslovakian nationality, will follow. Also, there will be Document Books 78 and 79 introduced.

I would like to mention, just so that we will have adequate notice, that Dr. Ehrlich and Dr. Orlik will both be the following witnesses, probably on the following day.

THE PRESIDENT: Now, the affidavits of the three witnesses you enumerated are in Book 75, is that correct?

MR. MINSKOFF: Vitok and Spatoin, I believe, are both in 75. Ehrlich and Orlik are in Book 80.

THE PRESIDENT: Anything further?

MR. MINSKOFF: That is all.

THE PRESIDENT: The Tribunal will rise until 9:30 tomorrow morning.

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Volume 12, p. 3,928-4,313a

Nov. 18-24, 1947

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

OFFICIAL RECORD

UNITED STATES MILITARY TRIBUNALS NÜRNBERG

**CASE No. 6 TRIBUNAL VI
U.S. vs CARL KRAUCH et al
VOLUME 12**

TRANSCRIPTS
(English)

18-24 November 1947 pp. 3928-4313a

Official Transcript of American Military Tribunal
VI in the matter of the United States of America
against Carl Krauch, et al, defendants, sitting
at Nuernberg, Germany, on 18 November 1947,
0930-1630, The Honorable Curtis G. Shake, presiding.

THE MARSHAL: The Honorable, the Judges of Military
Tribunal VI. Military Tribunal VI is now in session. God
save the United States of America and this Honorable Court.

THE PRESIDENT: You may report as to the defendants,
Mr. Marshal.

THE MARSHAL: May it please your Honors, the defendants
are all in court.

THE PRESIDENT: The Tribunal wishes to state to counsel
that, in view of the objections made with respect to Dr.
John H.E. Fried

Just a moment. There seems to be some mechanical
difficulties here.

The Tribunal wishes to state to counsel that, in view
of the objections that were last urged with respect to
Dr. John H.E. Fried acting as Commissioner of the Tribunal,
until further advised the Tribunal will not assign any
functions to Dr. Fried. We're still giving consideration
to that matter.

For further information of counsel, however, we wish
to inform you that as of today the Tribunal has filed in
the Secretary General's office an order naming James G.
Mulroy who, for your information, is one of the legal
assistants of the Tribunal, as an additional commissioner.
We shall not burden the record at this time to read the
order since it is identical, except as to the name of the
Commissioner and the date, with the order that was entered
naming Dr. Fried as a Commissioner. You will receive copies
of it in due time.

Has the Prosecution any preliminary announcements?

MR. SRECHER: None, Mr. President.

THE PRESIDENT: Does the Defense have any preliminary announcements?

Then the Prosecution may proceed with the presentation of its proof.

MR. MINSKOFF: The Prosecution offers at this time an affidavit, Document #NI 12390, as its Exhibit 1519, to be added to Book 75, and it calls as its first witness today, Mr. Hartland, of British nationality.

THE PRESIDENT: The Marshall will bring in the witness.

REGINALD AUSTIN HARTLAND, a witness, took the stand and testified as follows:

THE PRESIDENT: The witness will remain standing to be sworn and raise his right hand, please.

Do you solemnly swear that the testimony you are about to give shall be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE PRESIDENT: You may answer "I do".

THE WITNESS: I do.

THE PRESIDENT: You may be seated.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q What is your full name, Mr. Hartland?

A Reginald Austin Hartland.

Q And where do you reside?

A Worcester, England.

Q With respect to your affidavit, Prosecution's Exhibit 1519, are there any corrections or additions you wish to make at the present time?

A No.

Q There are no questions for the Prosecution, Your Honor. The witness is with the defense.

BY DR. GIERLICH (Defense Counsel for defendant Krauch):

Q Witness, in your affidavit you state that soon after your arrival in Auschwitz you worked in Shop #797. Can you tell me what kind of a job that was?

A Well, it was a general work shop for the benzine plant. It contained lathes, and drills, and all the necessary machinery there.

Q In what capacity did you work there, witness?

A I worked on the tires which were filtering beds for the benzine, helping to put in the filters for these tires.

Q You say that that Building #797 was in the Leuna part of I.G. Auschwitz. What do you mean by that?

A Well, as far as I remember, all the masters that worked with me came from Leuna.

Q Then you are referring only to the place where the Germans came from - the Germans who worked there with you?

A No, not definitely. They all worked in the benzine plant, as far as I know, and that was the Leuna products there.

Q Do you know, witness, that no gasoline was ever produced in Auschwitz?

A Yes, there was, definitely.

Q You know then that gasoline was produced in Auschwitz?

A Yes. m

Q You maintain that assertion even if I put to you that the gasoline production of Auschwitz never came to operation?

Q There are no questions for the Prosecution, Your Honor. The witness is with the defense.

BY DR. GIERLICH (Defense Counsel for defendant Krauch):

Q Witness, in your affidavit you state that soon after your arrival in Auschwitz you worked in Shop #797. Can you tell me what kind of a job that was?

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A I worked on the tires which were filtering beds for the benzine, helping to put in the filters for these tires.

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Q Then you are referring only to the place where the Germans came from - the Germans who worked there with you?

A No, not definitely. They all worked in the benzine plant, as far as I know, and that was the Leuna products there.

Q Do you know, witness, that no gasoline was ever produced in Auschwitz?

A Yes, there was, definitely.

Q You know then that gasoline was produced in Auschwitz?

A Yes. m

Q You maintain that assertion even if I put to you that the gasoline production of Auschwitz never came to operation?

A It did definitely, because there was quite a celebration when the first tankload of benzine was sent off - I believe to Russia. Trucks were decorated with garlands and many high officials came down there, and there was quite a celebration over it.

Q We shall leave that for a moment, witness. Your information seems to be quite exhausted in this direction.

MR. MINSKOFF: I move to strike the comment from the record.

THE PRESIDENT: It may be considered out.

Go ahead, please.

BY DR. GIERLICH:

Q You state further in your affidavit, Mr. Witness, that you were generally not badly treated, but you mention a few incidents, amongst which you mention the shooting of Corporal Reynolds. Were you personally present when your comrade was shot?

A No.

Q Your statement on this point is only what was reported to you from third parties, is that right?

A It was obvious. I saw the body, but I wasn't present when the shooting took place.

Q From the reports that you were given, do you know where this incident occurred?

A Not exactly. It was in the factory, but I don't know the exact location.

Q Perhaps you would remember if I put to you that this incident occurred near a pipe bridge and that the German sergeant shot your comrade because your comrade did not comply with the order, and refused to obey it three times in succession, contrary to the three other English prisoners of war who did obey the order?

A I don't know where the bridge was, as I said before, and as far as I remember, at the time the bridge was covered in ice and snow, and he refused to go up until he had ample protection. Some of the other British prisoners had such things as life belts to secure them to the bridge while they were working. Corporal Reynolds hadn't got one of these and refused to go up until he had one, and the result was he was shot.

Q Witness, I should like to put to you a photograph of this pipe bridge.

A I can't say that was the one definitely. It might be anywhere, but it was a similar bridge to that.

MR. SHRECHER: May we have it marked?

THE PRESIDENT: Yes. Let the exhibit be marked with the appropriate number of the client you represent.

DR. GIERLICH: I shall ask to have this photograph marked as Exhibit No. 2 for Schmitz.

THE PRESIDENT: Thank you.

BY DR. GIERLICH:

Q Witness, did you hear anything about the fact that the German sergeant who shot your comrade after he had asked him three times to comply with the order was put before a court-martial and punished for his conduct?

A I did not hear that.

Q You mention further another incident in which one of your English comrades was stabbed. Can you give me the name of that other person?

A What? The English comrade?

Q Yes, please.

A His name was Campbell. He was a Scotchman.

Q Can you give me any more detail about this incident,

the time when it happened, who perpetrated the deed and any other details?

A I don't know many details, but I only know it was the same unteroffizier that stabbed Campbell. He was the same man that shot Corporal Reynolds.

Q Was the latter incident with your comrade, Campbell, before or after the incident of the Reynolds incident?

A Before.

Q Were you present in the case of that incident?

A No, I was not present.

Q Thank you, Mr. Witness.

I should then like to ask you, witness, what was your relationship generally to the Germans who worked with you on the construction site?

A We certainly weren't friends.

Q No, that couldn't be expected according to the situation, but was the relationship correct?

A Explain what you mean by "correct", please.

Q I wanted to use another expression for your statement in which you expressed generally that you were not treated badly, and I thought that could be termed as treated correctly.

A I see. Yes, we were generally, generally speaking, treated correctly.

Q You make further statements, Mr. Witness, about the Russian women who also worked in the Farben plant in Auschwitz.

A Yes, that is correct.

Q You say that they were in a deplorable condition.

A Yes.

Q What do you mean by that? Do you mean their food,

their clothing, or what?

A Their clothing, the way they had to work, heavy manual labor. The clothing was not sufficient to keep out the cold. They had to tie paper bags around their legs to keep them warm in the winter. It was obvious to us, the British, that they were in a very bad condition.

Q Witness, you mention the fact that they had to wrap paper bags around their legs. Do you know that that is an age-old method which is quite customary in the building trade to protect oneself against the cold, and didn't you see that such protective measures were also applied by the Germans to a considerable extent?

A I never saw any Germans with bags around their legs like that, and I have never seen it in England either.

Q How many Russian women did you see working out-of-doors, Mr. Witness?

A I can't remember the number, but it must have been hundreds and hundreds.

Q I said people who worked out-of-doors, out-doors.

A Yes. They were working out-of-doors, hundreds of them, unloading railway trucks, doing heavy manual labor, old women.

Q Was that constant employment?

A Yes.

Q Or was that only occasional?

A That was constant employment.

Q Witness, I should like to submit a number of photographs to you.

THE PRESIDENT: How many photographs in the group, Counsel?

DR. GIERLICH: Altogether there are seven, Mr. President.

THE PRESIDENT: Then let the record show that a group of seven photographs have been identified as Exhibit 3.--

DR. GIERLICH: Exhibit 3, Mr. President.

THE PRESIDENT: -- of the defendant --

DR. GIERLICH: Schmitz.

THE PRESIDENT: -- Schmitz for identification only; and will you see, Mr. Secretary, that these photographs are clipped together some way so we can keep the seven to themselves.

BY DR. GIERLICH:

Q Witness, are those photographs pictures of Russian women as you saw them in Auschwitz?

A Not as I saw them in Auschwitz. The ones that worked outside that I saw were old, much older women. There were some young girls such as those in the photographs who worked on the machines in the workshops.

Q Witness, in your affidavit you speak of the fact that the inmates were beaten by the SS and the Capos and that they were also beaten by the Farben foremen. Can you give me the names of those Farben foremen whom you observed as they were beating inmates?

A No, I don't know the names of them.

Q In the Department 797 in which you worked did anything like that happen?

A Well, not actually in the workshop but in the surrounding outer shops there were cases of that.

Q So that the Germans with whom you worked did not participate in such incidents?

A Some did, yes, but not in the main workshop.

Q And the names of those German foremen who worked in your department you no longer remember, is that right?

A No, I didn't know them anyway. I wasn't that interested.

Q Thank you. You also mention the fact that inmates were beaten to death and then taken away in a wheelbarrow, but your statement does not give one the opportunity to find out who was to be charged with such conduct because previously you mentioned Capos, SS and foreman. Therefore, could you please specify your statement?

A Well, all three were just as responsible, Capos, SS men and the German meisters.

Q I should like to define my question a little more. Did you see how a German meister beat one of the inmates to death?

A Well, they were beaten unconscious --

THE PRESIDENT: No, witness. The question did not ask you what you saw but did you see that occur?

THE WITNESS: Did I see a German meister beat an inmate to death?

THE PRESIDENT: That is the question.

THE WITNESS: Yes.

BY DR. GIERLICH:

Q But you cannot give me the name of that meister?

A No.

Q Can you give me the department in which he worked?

A Well, it was attached to 797 workshop.

Q Thank you. Under No. 5 of your affidavit you speak of the fact that many of the inmates had sores for which they appeared to receive little or no medical treatment.

A Yes.

Q What gave you that impression.

A Well, they weren't bandaged up. They were running

sores. They were like that for weeks at a time, and when we spoke to these fellows and asked them why they did not have any medical treatment, they appeared to be afraid of reporting these matters. They all seemed of the same opinion that if they were sick and therefore no longer fit for work, they would end up at the gas chamber and be exterminated.

Q But, witness, if the inmates were afraid of such a development, they had to be very much concerned with treating their sores as carefully as possible so that they could be cured as quickly as possible. Did the inmates tell you that medical care had been refused to them?

A No, they didn't say it had been refused, but they were afraid to take medical care. They were afraid of their lives.

Q Witness, I have to put something to you. In Camp No. IV there was a large number of physicians among the inmates. I cannot see how the inmates should be afraid after their working hours were finished in the evening to come to their comrades and have them treat their wounds. Can you explain that to me? You say, "It seemed to me", and I wanted to get a clearer picture what gave you that impression, how you arrived at that point of view, since you say, "It seemed to me", and I wanted to find out how you formed this impression.

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MR. SPEECHER: Mr. President, it seems to me if there were a question that could have been put in about ten words, instead of having a speech and argumentation to the witness...

THE PRESIDENT: Well, the Tribunal cannot undertake the responsibility of editing the question. The question is somewhat involved but if the witness understands the question he may answer it. After all, his understanding is the test of whether it is a proper question.

If you understand what counsel is asking, Mr. Witness, you may answer the question; if you do not, you may so state and ask that it be restated.

WITNESS: Well, I would like it shortened, Your Honor.

THE PRESIDENT: It isn't a question if it is long or short; it is a question of if you understand it sufficiently to make an intelligent answer, well, answer it. If not, advise the Tribunal and we will ask Counsel to restate his question.

WITNESS: I would like the counsel to restate his question.

THE PRESIDENT: Will you ask again, please, Counsel?

BY DR. GILBLICKS:

Q I should like to find out from you, Mr. Witness, whether the inmates said anything to you about the fact that they were afraid to have the inmate physicians treat their wounds?

A They were afraid to have anyone treat their wounds in camp because they knew that if they were found out to be so ill and were off work for a number of days they would therefore be no longer of any use to the Germans and would be exterminated. That was common knowledge.

Q Witness, you mentioned the fact that you became friends with Mr. Norbert Wollheim?

A Yes; that is correct.

Q And you also say that although it was forbidden to speak to the inmates--

A Yes.

Q Since, generally, you always had to work with other people and

also with Germans, the attitude of those Germans cannot have been very hateful, for otherwise they would not have tolerated your speaking to Mr. Vollheim.

MR. LINSKOFF: I don't see any question but yes to the witness, Your Honors.

THE PRESIDENT: Well, that objection will be sustained. That is hardly proper. Rephrase your matter of inquiry, Counsel.

BY DR. GIERLICH:

Q Mr. Witness, how was it possible that you could speak to Mr. Vollheim and that you could become friends with him, although it was forbidden to speak to him, as you say?

A Well, under the pretense of working we carried out a conversation. The Germans, of course, couldn't keep their eyes on us all the time.

Q Thank you. Witness, were you yourself ever in Camp IV?

A No.

Q You were never present when the food was distributed, were you?

A Not in Camp IV, but the inmates had food distributed in the factory at mid-day.

Q But only the noon meal?

A That is all, as far as I know--yes.

Q About the food which the inmates received in the morning or in the evening, you cannot make any statement from your own knowledge, is that right?

A Not from my own knowledge, no.

Q Witness, you mentioned the food parcels that you received, and you said that after you had received such parcels you gave the inmates your soup. In this connection I should like to ask you: Wasn't it true that the nutritional condition of the British soldiers who received these parcels by way of the Red Cross could generally be considered much better than that of the Germans?

A Yes, I suppose so.

Q And isn't it true that in 1944 the Germans were very envious of those treasures that you received in your food parcels?

A Yes.

Q To clarify things, I should like to ask you one more question—

THE PRESIDENT: Pardon me, Counsel. Will you permit an interruption? May the Tribunal inquire: Does anyone feel cold in the court room? Is it a bit chilly? What do you say, gentlemen? The Marshal has just asked us about the temperature.

Go ahead, Counsel.

Q May I repeat my question, Mr. President?

THE PRESIDENT: Yes; certainly.

BY DR. GILRLICH:

Q Witness, you mentioned the soup which the inmates received in the plant. Do you know that this soup was an additional food and did not constitute the noon-day meal of the inmates, but was only an additional food which the inmates got to the food that was given them by the camp?

A No; I didn't know that. But in any case the food was absolutely inadequate—the soup, rather. It was just water, in any case, so whether it was an addition or not wouldn't make a lot of difference.

Q I do not want to argue with you about that, Mr. Witness.

I have only one more question to you. You mention the fact that you had to keep secret from the Germans the fact that you turned over your soup to the inmates, because they did not want you to help the inmates. Can you cite this instance as an example of the general attitude of the Germans there?

A Yes.

Q And were there any exceptions where Germans tried to understand the situation of the inmates, to help them, and perhaps even to help them illegally by violating regulations of the SS? Did you ever hear of such exceptions?

A No; definitely.

DR. GIERLICH: Thank you, Mr. President. I have no further questions.

THE PRESIDENT: Does counsel for the Defense desire to cross-examine this witness any further? (No response)

Since no such desire is expressed, is there any re-direct examination by the Prosecution?

MR. MINSKOFF: Just one question, if it please the Court.

Other than the soup that you saw the inmates receive at noon-day, did you ever see them receive any other food at that time?

WITNESS: Not at mid-day; no--definitely not.

MR. MINSKOFF: That is all.

THE PRESIDENT: Now is counsel through with the witness?

So appearing, the witness is excused and the Marshal may escort him from the box.

Call your next witness, Mr. Prosecutor.

MR. MINSKOFF: If it please the Court, the Prosecution will continue with documents in Book 78.

THE PRESIDENT: Very well.

MR. MINSKOFF: Does the Court have the books.

THE PRESIDENT: I think so.

MR. MINSKOFF: I might add that it will be followed by Book 79, so you can have both books ready.

THE PRESIDENT: You may proceed, and I will keep notes.

MR. MINSKOFF: With respect to the first document, which is Prosecution Exhibit 1423, already in evidence, the Court's attention is drawn to page 2 of the English and page 2 of the German. This is an affidavit of the defendant Duerrfeld. He states:

"When Otto Ambros or Heinrich Buetevisch could not be present in person they were informed about the problems discussed at the Construction Meetings through minutes that were sent to them. Otto Ambros and Heinrich Buetevisch, the members of the Executive Board responsible for I.G. Auschwitz, were informed by the Construction Meetings about

all the more important events at the building lot I.G. Auschwitz. I have received my basic directives from the Construction Meetings, that is, from Otto Ambros and Heinrich Rustefisch who were responsible for I.G. Auschwitz and I.G. Farbenindustrie."

And the following page, in paragraph 13: "As long as the Prisoners' Camp Monowitz existed, I have been there about five-ten times."

And in paragraph 18, page 4 German and English:

"In the years 1942-1944, I.G. Auschwitz was visited by Carl Krauch, Fritz Ter Meer, Christian Schneider, and others. Otto Ambros and Heinrich Rustefisch, the members of the Executive Board (Vorstand) responsible for I.G. Auschwitz, were rather often at the Auschwitz plant of the I.G."

Prosecution also calls the Court's attention to its Exhibit 1419, at page 5 of the English and 6 of the German, where the defendant Ambros states -- I am sorry, that was NI-9542, the second document in the book.

THE PRESIDENT: What is the Exhibit number again, please?

MR. LINSKOFF: It is Prosecution Exhibit 1419.

THE PRESIDENT: Thank you.

MR. LINSKOFF: The defendant Ambros states, and I quote:

"In the I.G. at Auschwitz I was responsible for Swarte II. My superior, therefore, was Fritz ter Meer; my superior next to Ter Meer was the chairman of the Vorstand, Geheimrat Hermann Schmitz."

"Walther Duerrfeld reported to me on the I.G. Auschwitz and received instructions from me concerning Buna until Dr. Eisfeld, the chemist, came to Auschwitz. After Dr. Eisfeld had come to I.G. Auschwitz, and when Walther Duerrfeld became Betriebsfuehrer of I.G. Auschwitz, both Walther Duerrfeld and Dr. Eisfeld reported to me. I was the superior of both Walther Duerrfeld and Dr. Eisfeld. Heinrich Buetefisch was responsible for the Leuna sector of I.G. Auschwitz."

Then at page 16 of the English and 20 of the German, in paragraph 20 it states: "I several times watched the inmates when they marched out of the I.G. plant at Auschwitz."

And further down, in paragraph 21: "Altogether I visited the concentration camp Auschwitz three times: in March-April 1941; in the fall of 1941, together with Fritz Ter Meer; and also on the occasion of the Gauleiter's visit in the winter of 1941-42."

"From my visit in the fall of 1941 or in the winter of 1941-42 I took a horrible recollection with me of Russians in the concentration camp Auschwitz. Going by the uniform, they were Russian prisoners of war. They had no coats and felt very cold. Aside from Auschwitz I did not inspect any other concentration camp."

"The I.G. Auschwitz was visited--aside from other persons--by Fritz Ter Meer, Christian Schneider, Ernst August Struss and Carl Krauch. Fritz Ter Meer visited the concentration camp together with me, in the fall of 1941. After the visit Fritz Ter Meer and I talked about the visit. Carl Krauch visited the concentration camp without me."

On page 21 of the English, paragraph 32, page 27 of the German: "On the average I visited I.G. Auschwitz every two or three months, that is: In 1941, about four times; in 1942; four times; in 1943, five times; 1944, five times."

Prosecution calls attention to its Exhibit 1420, which is NI-4033, at the top of the page, and it draws the Court's attention to page 25 of the English and 32 of the German, where the defendant Carl Krauch states, in paragraph 11:

"Ambros and Bueteifisch were the members of the Executive Board responsible for I.G. Farben Auschwitz. Ambros for all questions concerning Buna, as well as for almost all questions regarding the allotment of labor administration; Bueteifisch chiefly for the methanol and synthesis establishment which was erected at Auschwitz at the same time. Duerrfeld was the manager of I.G. Auschwitz responsible at the place. Ambros had to be informed about all events that took place at I.G. Buna Auschwitz."

"I visited I.G. Buna once. I know that the gentlemen Ter Meer, Ambros, and Bueteifisch have visited I.G. Buna Auschwitz."

Prosecution passes to its Exhibit 1418 in evidence, and calls the Court's attention to pages 29 and 30 of the English, 34 of the German.

THE PRESIDENT: To keep the record clear, are you referring to Document NI-7604?

MR. MINSKOFF: That is right, Your Honor. It is the affidavit of the defendant Schneider. In paragraph 14 Defendant Schneider states: "I have been to I.G. Auschwitz twice. I have been neither in the Auschwitz concentration camp nor have I been to the concentration camp of Monowitz."

"On the occasion of my visit to the I.G. Auschwitz, I saw the concentration camp prisoners at work, for instance, at transportation work, carrying concrete bags and digging.. The prisoners were wearing striped suits and were guarded by SS. Some of them were worn-out, overworked people, while others still looked all right."

"I have heard that concentration camp prisoners were beaten on the I.G. building site."

Prosecution calls attention to its Exhibit 18, which is NI-5197. It is an affidavit of the defendant Schnitzler. On page 71 of the English and 84 of the German I wish to correct the characterization of the document: it is an interrogation, not an affidavit.

On page 71 it is stated:

"Q. During the last quarter 1944 (you said yesterday) that a Mr. Muller-Cunradi 'alluded' to you that the poisonous gasses and the chemicals manufactured by I.G. were being used for the murder of human beings held in

concentration camps?"

"A. So I understood him."

"Q. Didn't you question those employees of yours further in regard to the use of those gasses?"

"A. They said they knew it was being used for this purpose."

"Q. What did you do when he told you that I.G. chemicals were being used to kill, to murder people in concentration camps?"

"A. I was horrified."

"Q. Did you do anything about it?"

"A. I kept it for me because it was too horrible. I was always under the impression that those gasses were not manufactured by us. I asked Muller-Gunradi: 'Is it known to you and Ambros and the other directors in Auschwitz that the gasses and chemicals are being used to murder people?'"

"Q. What did he say?"

"A. 'Yes, it is known to all I.G. directors in Auschwitz.'"

Prosecution offers NI-9811 as its Exhibit 1520. It is an affidavit of the defendant Lautenschlaeger.

The Court's attention is drawn to page 77 of the English and 94 of the German where the defendant Lautenschlaeger states, in paragraph 17: "In discussions in Hoechst in about 1943-44, I learned from my colleagues who had visited Ludwigshafen and had met employees of the I.G. Auschwitz there that people were being gassed in the Auschwitz concentration camp. I think that I also had some conversation on the gassing of people in Auschwitz with the Vorstand member Friedrich Jaehne, chief engineer of the Hoechst I.G. works, whose son was employed as an engineer at I.G. Auschwitz."

Prosecution offers Document 11706 as its Exhibit --

THE PRESIDENT: What about NI-5168?

MR. MINSKOFF: I am sorry, Your Honor. I missed that; I intended to refer the Court's attention to that. It is Prosecution Exhibit 246.

THE PRESIDENT: Thank you.

MR. MINSKOFF: I intended to call the Court's attention to page 84 of that exhibit and 103 of the German, to the paragraph designated "20" where the defendant states:

"During the time of my activities with the I.G. Farbenindustrie A.G., I visited the Buna Auschwitz works, to which the concentration camp prisoners were allocated, three times, the last time about Easter 1943. My son, Norbert Jaehne, worked as engineer in the boiler house of the Buna Auschwitz works from about 1942 to 1945."

At this time then, Your Honors, Prosecution offers NI-11706, as it is Exhibit 1521, and draws the Court's attention to page 87 of the English and 107 of the German.

THE PRESIDENT: Is the author of that affidavit to be produced for cross-examination?

MR. MINSKOFF: That is one of the British prisoners of war with respect to whose affidavit the Defense has waived cross-examination.

THE PRESIDENT: Very well.

MR. MINSKOFF: On page 87 of the English and 107 of the German, Mr. Wooley states:

"As for myself and the other British prisoners, we weren't treated too badly during the work. Also we received extra food from the Red Cross without which we never would have been able to pull through. But the Jews or Stripes, who got much worse food than we did, never got any additional outside food or help. They were just walking corpses; they were haggard and drawn; their arms and legs were extremely thin, practically skin and bones. Their dress consisted of striped pajamas of very thin material and the big majority of them had no other clothes at all. A few lucky ones might have a tattered undershirt, and in the winter-time coats made of the same material as the pajamas. Their heads were shaved and they would walk bowed down, and they weren't really walking—they just shuffled along. At night and in the morning we could see them coming to and from work. Although they could hardly carry themselves, I would often see them carrying their comrades who had collapsed from exhaustion at the factory. I myself would

often see these inmates dropping at their work, unable to carry on. When these poor fellows fell down, you could be pretty sure that it was impossible for them to keep standing because they all were familiar with the slogan "Not Fit to Work—Not Fit to Live."

(Minskoff)

The Court's attention is called to Prosecution's Exhibit 1487, as Document 11700. It is an affidavit of Captain Robertson. This is again an affidavit of a British prisoner of war, with respect to whom cross-examination has been waived.

On page 28 - 29 of the English, and 110 of the German, Captain Robertson states:

"From observation the condition of the concentration camp inmates was seen to be gaunt, expressionless, dazed, with sallow-white skin, obviously severely under-nourished and dressed in nothing but a thin striped suit, occasionally with a thin striped overcoat of the same material, even in the winter time. They were badly shod, sometimes with clogs or the remains of leather boots. In my opinion anyone who observed these inmates at work would know immediately that these men in the striped clothes were working corpses, that they were being starved to death and forced to work at the same time."

Incidentally Captain Robertson was one of the two British doctors who took care of the British prisoners of war.

THE PRESIDENT: Counsel, you did not assign a number to that.

MR. MINSKOFF: That was Prosecution's Exhibit 1487.

THE PRESIDENT: Now may we not observe that with respect to these affidavits where cross-examination has been waived, - may we not assume that those are largely cumulative in character, and that we can conserve time, since we must study this entire record, just having them identified without explanation? If they are to be the subject of cross-examination, of course, it might be proper to point out the contents of it, or make some observations, but where counsel for the defense have waived the cross-examination, it occurs to us that perhaps we could save some valuable time by just having the document marked and pass on.

MR. MINSKOFF: May I state that for the purpose of conserving time, we would eliminate most of the affidavits with respect to which cross-examination has been waived, but I would like to state for the

record that we do not consider this type of affidavit, because of its very nature, as showing the widespread knowledge of what took place, as being cumulative in character.

THE PRESIDENT: Be that as it may, I think you can well afford to pass without any comment, those affidavits where there will be no cross-examination.

MR. MINSKOFF: The Prosecution calls the Court's attention to its next Exhibit, 1489, which is NI 10928.

THE PRESIDENT: Will that not be 1489?

MR. MINSKOFF: It is already in evidence, Your Honor, as 1489.

THE PRESIDENT: Very well. 10928 is in evidence as 1489, is that correct?

MR. MINSKOFF: That's right, Your Honor.

THE PRESIDENT: Very well.

MR. MINSKOFF: At Page 92 of the English, and 115 of the German, the affiant states:

"The number of these collapses and accidents fluctuated. Sometimes it amounted to one-fifth of the strength of the detachment".

DR. SEIDL: (Counsel for Duerrfeld): Mr. President, the affiant of this affidavit is one of those witnesses whose cross-examination has not been waived by the Defense, and I therefore think it would be appropriate if nothing were read from the affidavit, but that they should wait until the man has appeared in the witness stand himself.

THE PRESIDENT: The Tribunal does not wish to put itself in the position of trying to dictate how counsel present their case, but it might be well to make this observation for what it may be worth to counsel. We have been impressed with the thought that where the witness is produced for cross-examination, before we get through the examination in chief and cross-examination, we get over the bench, a pretty clear conception of what is in the document.

Now we assume that, at least the chair did, a moment ago, when we said it might not be worth the time to summarize documents where

cross-examination has been waived, -- we assumed that that might be proper in view that in the broad scope of the subject to be covered, this might be denominated as more or less cumulative evidence. We are certainly not complaining about the volume of the evidence, or its admissibility, but from the very fact that there are a number of these documents describing conditions in the different camps, we think you might save some time by simply marking those exhibits and also that some time could be saved when you know the exhibit is going to be the subject of a cross-examination. All in the interest of time, and not criticism in the way of producing your evidence here, but if you can help us in that regard, it will be to the benefit of all concerned. You may go on.

MR. MINSKOFF: In view of the President's remarks, we will pass without further comment, the affidavit of the affiant Stalschak, which is 1489.

THE PRESIDENT: Could you pardon just one further word? When you know that the witness will be produced for cross-examination, or that his cross-examination has been waived, would you mind telling us about it, and we will note it on our index. It helps us keep track of the situation.

MR. MINSKOFF: With respect to the witness Stalschak, which is 1489, we expect to produce him for cross-examination.

The next document is 11699, and is already in evidence as Prosecution's Exhibit 1475. That is a British prisoner of war, with respect to whose affidavit cross-examination has been waived.

The following two documents, NI 11695, which is in evidence as 1471, and NI 11694, which is in evidence as 1464, both have appeared before this court, and there is no point in elaborating on their affidavits.

NI 11705, which is in evidence as Prosecution's Exhibit 1453, is again a British prisoner of war, with respect to whose affidavit examination has been waived.

The following document, NI 11704, Prosecution's Exhibit 1495,

this witness has appeared before this court.

With respect to NI 5847, Prosecution's Exhibit 1485, this witness will be produced for cross-examination. The name of that witness is Berthold Epstein, a Czechoslovakian National.

The following document, NI 4829, is Prosecution's Exhibit 1455, and is that of Mr. Tauber, who has appeared before this Tribunal.

The next two documents, -- the next document, is NI 11703. The Prosecution offers that as its Exhibit 1522. In view of the fact that here again cross-examination has been waived, no further comment will be made. That is the affiant Harry Longden, George Harry Longden.

The following document, 11702, is Prosecution's Exhibit 1472, and is an affidavit of Kenneth Lovell with respect to whose testimony, cross-examination has been waived.

The following document, NI 1153, is Prosecution's Exhibit 1463. That is Robert William Farris who has appeared before this Court.

The following document, NI 4827 appears as Prosecution's Exhibit 1484. It is the affidavit of Beach Proister, who will be produced for cross-examination.

The following document, NI 4826, which is Prosecution's Exhibit 1470, is the affidavit of Jan Stern, who has appeared before this Tribunal.

The following and last document in this book is NI 10927, and is offered as Prosecution's Exhibit 1523. In view of the fact that here again cross-examination has been waived, no comment will be made. I am sorry, -- am I correct in saying that it has been waived or it has not been waived? I will withdraw that comment, if it please the court.

THE PRESIDENT: Yes.

MR. MINSKOFF: It is Colonel Edward Tilley. The affiant will be produced for cross-examination.

THE PRESIDENT: Thank you.

DR. GIERLICHES, Counsel for Geheimrat Schmitt: Mr. President, the document which has just now been submitted is not unambiguous as to its

legal character. Contrary to the index which classifies it as an affidavit, it is really not an affidavit at all since the clause is missing, — the oath is missing. On the other hand it cannot be introduced as a record about the measures at the time because as is customary in such cases, it was not propounded immediately after those measures were taken, but two years thereafter.

The Defense which is interested in having the facts in this document clarified, does not want to raise any formal objection against the admissibility of this document, if the Tribunal also will permit us, in principle, to have the author of this statement called for the cross-examination as if he were an affiant.

I should, however, like to make one further statement in this connection. Through formal channels I have already asked the administrative officials of the Tribunal to procure the collection of photographs which my client was given at that time, and I have also looked up where this document was confiscated, and where it was at last found. I believe that it might perhaps be possible to have those documents procured here before this Tribunal, and that we shall then be in a position to waive cross examination of a person who makes statements about the contents of this book, two years after he had seen them, where personal inspection is surely a better method.

MR. SPEECHER: Just a second, Mr. President, the prosecution withdraws any offer of this document, NI 10927. In case you should think one has been made at the present time, because no one is more anxious than we are, that merely signed statements of persons who could have made affidavits should be introduced.

When the witness appears we will ask him then under oath, to make his affirmation concerning the contents. With respect to the document referred to, the prosecution has attempted, even by radio broadcast in the United States, to obtain it, and we will continue to try to obtain it, and if Dr. Cierlich can obtain it, we should be only too happy to have him produce it.

THE PRESIDENT: Thank you. Then since the document was offered and subsequently withdrawn, the document, NI 10928, will be given Exhibit No. 1523 for identification only, and placed in the record for the use of counsel as they may see fit.

That completes Book 78 does it not?

MR. HINSKOFF: That is correct, Your Honor. May it please the Court, we will proceed with Document Book 79.

THE PRESIDENT: It appears to the Tribunal that this is a book made up, very largely, of affidavits, and if you think it is fair to you in your presentation, we suggest that you follow the same procedure hence. If there is some good reason that you think justifies the time for a departure from the suggestion that the Tribunal made, we do not mean it as a restriction, but we think that the suggestion we made will be sufficient for our purposes, unless you think there is good reason for some other procedure.

MR. HINSKOFF: If it please the Court, the Prosecution had intended, with respect to most of the document in this book, to offer them without comment.

THE PRESIDENT: Very well.

MR. TISDENT: The first document is NI 4827, which appears as Prosecution's Exhibit 1434. That is the affidavit of Hoack Treister, concerning whom we referred to in a previous book, that he will be called as a Prosecution witness, and made available to the Defense for cross-examination.

The following document is NI 11705, Prosecution's Exhibit 1453, is a British prisoner of war with respect to whose testimony cross-examination has been waived. The affiant is Dennis Arthur Greenham.

The following document is NI 7967, which appears as Prosecution's Exhibit 1452, and is the affidavit of Erwin Schulhof, who has appeared before this Court.

Similarly, NI 7104, which is Prosecution's Exhibit 1465, is an affidavit, -- 1465, -- is an affidavit of Gregoire Affine, who has appeared before this Court.

The Prosecution offers at this time as its Exhibit 1524, NI 11697. This is an affidavit of Horace Reginald Charters, a British prisoner of war, with respect to whom cross-examination has been waived.

The same is true for the following document which is NI 11692, Prosecution's Exhibit 1480, the affidavit of Douglas Tilbrook Frost.

The Prosecution offers as its Exhibit 1525, Document NI 11698, the affidavit of David Innes Alexander, a British prisoner of war, with respect to whose testimony cross-examination has been waived.

The following document is 18807, which is presently Prosecution's Exhibit 1476, The affidavit of Norbert Vollheim, who has appeared before this Court.

The same is true of the following two documents, NI 11696, Prosecution's Exhibit 1462. It is the affidavit of Charles Joseph Coward, NI 12069, Prosecution's Exhibit 1468 is the affidavit of Gustav Horzog.

At this time the Prosecution asks leave to withdraw Document NI 12070, the affidavit of Stefan Indziaszek.

THE PRESIDENT: Leave is granted.

MRS. HENSHOFF: The Prosecution offers NI 10060, as its Exhibit 1526. This is a letter from the defendant, Carl Krauch, to the Reichsfuehrer Himmler. The Court's attention is drawn to Page 53 of the English, and 60 of the German. In this letter, if it please the Court, the defendant Carl Krauch, two years after I. G. Auschwitz, writes to Reichsfuehrer Himmler and reports, the first paragraph, which is page 53 of the English, and 60 of the German:

"My assistant on this particular question, Dr. Eckell, has reported to me on the discussion which he had with you and has prepared the attached notes on it. I was particularly pleased to hear that during this discussion you hinted that you may possibly aid the expansion of another synthetic rubber factory, which I consider absolutely essential for securing rubber supplies, in a similar way as was done at Auschwitz, by making available inmates of your camps, if necessary. I have also written to Minister Speer to this effect, and would be grateful if you would continue sponsoring and aiding us in this matter."

The Prosecution passes to NI 11956, which it offers in evidence as Prosecution's Exhibit 1527. We call the Court's attention to page 61 of the English, and 76 of the German. This is a report by the defendant Dierffeld, on the evacuation of Auschwitz. He states:

"Here cases of desertion on Thursday, 18 January, 1945. It was impossible to prevent them in spite of police and military cordons. A warning notice was put up to the effect that 15 men had been shot for trying to escape. The Gestapo received orders to execute men by shooting if necessary."

On page 63 of the English, 81 of the German:

"The British prisoners of war left at the order of the Betriebsfuehrer by Dierffeld."

That completes —

THE PRESIDENT: That about this last memorandum at the bottom of your index with reference to some chart?

MRS. HENKOFF: The Prosecution offers MI 10040, as its Exhibit 1526. This is a letter from the defendant, Carl Krauch, to the Reichsfuehrer Himmler. The Court's attention is drawn to Page 53 of the English, and 60 of the German. In this letter, if it please the Court, the defendant Carl Krauch, two years after I. G. Auschwitz, writes to Reichsfuehrer Himmler and reports, the first paragraph, which is page 53 of the English, and 60 of the German:

"My assistant on this particular question, Dr. Bokell, has reported to me on the discussion which he had with you and has prepared the attached notes on it. I was particularly pleased to hear that during this discussion you hinted that you may possibly aid the expansion of another synthetic rubber factory, which I consider absolutely essential for securing rubber supplies, in a similar way as was done at Auschwitz, by making available inmates of your camps, if necessary. I have also written to Minister Speer to this effect, and would be grateful if you would continue sponsoring and aiding us in this matter."

The Prosecution passes to MI 11956, which it offers in evidence as Prosecution's Exhibit 1527. We call the Court's attention to page 61 of the English, and 76 of the German. This is a report by the defendant Duerffeld, on the evacuation of Auschwitz. He states:

"Here cases of desertion on Thursday, 18 January, 1945. It was impossible to prevent them in spite of police and military cordons. A warning notice was put up to the effect that 15 men had been shot for trying to escape. The Gestapo received orders to execute men by shooting if necessary."

On page 63 of the English, 81 of the German:

"The British prisoners of war left at the order of the Betriebsfuehrer by Duerffeld."

That completes —

THE PRESIDENT: What about this last memorandum at the bottom of your index with reference to some chart?

MR. WINSKOFF: That chart will not be offered. It may be crossed out.

THE PRESIDENT: Very well. That completes book 79; is that correct?

MR. WINSKOFF: Yes, Your Honor.

THE PRESIDENT: It is almost time for recess. Do you wish to state what you are going to take up after our intermission?

MR. WINSKOFF: After the intermission we will have a witness, Dr. Vitek.

THE PRESIDENT: Will the Marshal see that he is in the box when we resume after recess?

There is a document in Judge Robert's book at the end of 79, No. 1257, -- Document No. 1257, -- which purports to be a report signed by POHL.

MR. WINSKOFF: That is correct, and the prosecution is going to offer that.

It is just that it was handed up at the last minute, and we thought that we would offer it after the recess.

THE PRESIDENT: You will offer it as a part of this book?

MR. WINSKOFF: That is right, Your Honor.

THE PRESIDENT: The Tribunal will now arise for its morning recess.

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Counsel, did I understand that this witness is a Czech national?

MR. MINSKOFF: That is right, your Honor.

HUDOLF VITEK, a witness, took the stand and testified:

THE PRESIDENT: Will the witness please remain standing for the purpose of being sworn, raise his right hand say "I" and state his name?

THE WITNESS: I, Rudolf Vitak.

THE PRESIDENT: And now repeat after me please? Swear a pure oath that to all questions asked here before this Tribunal I shall answer only the truth, nothing but the truth and that knowingly I shall withhold nothing. (The witness repeated the oath.) Mr. Witness, has the use of the two light-bulbs in front of you been explained by the Marshal?

THE WITNESS: Yes.

THE PRESIDENT: And now may I also admonish you further to speak slowly and distinctly and to make your answers as brief and direct as you can?

THE WITNESS: Yes.

THE PRESIDENT: Do not feel called upon to volunteer information, but be assured that if your answers are incomplete additional questions will be asked.

THE WITNESS: Yes.

THE PRESIDENT: And one thing more; is you will watch counsel and allow a bit of time between his question and your answer so that the translation may be made to us, it will very much facilitate your testimony.

THE WITNESS: Yes.

THE PRESIDENT: The witness is with the Prosecution.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q. The affidavit, if it please the Court, of this witness appears in Book 75. It is Document NI-4830 and is Prosecution's Exhibit 1A61.

It's at page 43 of the English and 61 of the German. Mr. Vitek, what is your full name?

A. Rudolf Vitek.

Q. And where do you reside?

A. Prague VII, Beldredinstr. 56.

Q. With respect to your affidavit, which is now in evidence as the Prosecution's Exhibit 1461, are there any corrections or additions that you wish to make at this time?

A. No.

MR. KINSHOFF: There are no further questions on the part of the Prosecution. The witness is with the Defense.

THE PRESIDENT: Please cross examine.

CROSS EXAMINATION

BY DR. SKIDL:

Q. Dr. Seidl counsel for the defendant Dr. Duerfeld. Dr. Vitek, when in 1942 were you sent to Camp 4 at Monowitz? Do you remember the exact date?

A. It was approximately the first of November 1942.

Q. Were inmates in Camp 4 before you arrived there, or were you one of the first?

A. Our transport was the first labor transport to arrive, but before that date the functionaries and the guards were already present.

Q. How many were you altogether, when you were sent from Auschwitz to Monowitz?

A. There were two to three thousand persons.

Q. How many barracks were available in Camp 4 at that time?

A. I am afraid I can't tell you that exactly.

Q. Obviously a number of barracks were ready?

A. Yes, a large number of barracks were ready. The camp was still being constructed; it had not been finished.

Q. Am I correct in saying it was enlarged as time went on?

A. That's true.

Q. Then were you sent away from Camp 4, Monowitz, and where were you sent?

A. On 22 February 1943 I was sent to the sick-bay at Auschwitz.

Q. And from 13 December 1942 to 13 January 1943 you were employed at the sick-bay at Camp 4 as a nurse; is that true?

A. Yes.

Q. Did you, yourself, work in a detail in the I. G. plant?

A. Yes, up to 13 December and from 13 January until I was transported away I worked in the plant.

Q. That was a rather short time, wasn't it?

A. Yes, relatively short.

Q. What was the first work detail in which you worked, Mr. Vitek?

A. My first detail consisted of the carrying of iron bars and ties. We had to carry whole switches.

Q. Can you still remember at what construction place you had to do this work?

A. I am afraid I can't remember that.

Q. Is it true that these switches and ties were laid for firm of Schulz which installed all the tracks for the I. G.? Did you hear anything about that?

A. I can hardly believe that; I can't really tell you anything about it.

Q. You don't know?

A. No.

Q. What was the second work detail with which you worked, Dr. Vitek?

A. My second work consisted of digging. Work with pick and shovel.

Q. Is it true that you had to dig trenches, etc.

A. No, no trenches. I had to level the ground in order to enable a road to be built there later.

Q. I see. In your affidavit you also say that you worked with

Detail 1, where you had to carry cement sacks. How long were you there?

Can you remember that approximately?

A. Yes, I can. I estimate one week.

Q. Can you tell me how great the distance was on which you had to carry cement sacks and how many inmates were used with that detail?

A. I think there were approximately 60. The distance fluctuated according to where the trains stopped. In other words, the cement sacks were carried a distance of two or three hundred meters.

Q. Witness, behind you, you will find a map which shows the I. G. plant at Auschwitz, and upon which you will find crossroads and roads running the length of the camp. Is it true that along all these latter roads there were railroad tracks, and that transport goods were carried on these railroads?

(The witness looked at the map)

A. I really can't tell you.

Q. You do not remember that?

A. Not so much that I can't remember, but if you keep in mind that the terrain was about ten kilometers long and five kilometers wide, as far as I can estimate, and if you also keep in mind that our detail was engaged only on a small part of this terrain, the inmate had no opportunity for survey at all.

Q. Witness, do you mean to say that the I. G. plant site was ten kilometers long and five kilometers wide?

A. That is a very rough estimate on my part. At any rate, the time it took us to get to work varied between half an hour and one hour and a half, which gives you a difference of four kilometers.

Q. Witness, I don't wish to stress these questions of size. The size is shown exactly by the map which the Prosecution has submitted, and I don't need to go into that. I only want to ask you under whose supervision the cement carrying was done, you did that for about a week. Was it the SS, Kapos, prisoners, or foremen of Farben or of the firms. Can you tell us that?

A. Yes. It was principally Kapos who assembled us for work. Secondly, the SS took over the guarding. They formed the chain of guards. When we got to the working place itself, civilians supervised us.

Q. You said that engineers of Farben were present. Can you remember any names?

A. No, I am afraid not. Unfortunately, these gentlemen did not introduce themselves.

Q You go on to say that many beatings took place and that people were beaten to death every day. How often did you yourself see such people being beaten to death at the L. G. plant?

A Do I have to give you a direct answer to that question? Do you want a concrete figure?

Q If you can tell me that within a certain period of time, for instance, within a week, you saw that inmates were beaten so and so many times, I ask you to answer that question as concretely as possible.

A Fifty if you like; a hundred if you like; and two hundred if you like.

Q Did you see that yourself?

A Yes. I myself carried an inmate, who was beaten to death before my eyes, in order to put him down in the evening when we were gathered for roll call.

Q Witness, I did not...

THE PRESIDENT: Counsel, and witness, kindly observe your light. You are going a little bit too rapidly.

WITNESS: Very well.

THE PRESIDENT: And note also, that you should pause between the question and the answer, because we want to hear what both of you are saying.

THE WITNESS: Very well.

BY DR. SEIDL:

Q Witness, do you really mean to say that within the short period of time while you worked in the plant, hundreds of inmates were beaten to death at the plant?

A Yes.

Q Who were the perpetrators?

A All of those beat them who were able to beat them: civilians, Kapos, SS men.

Q Witness, what was your work — Can you hear me?

A. Yes.

Q. What was your work when you were sent to the sickbay of Camp IV as a nurse?

A. At first my work consisted of arranging a new block as a sickbay. I arrived there with eight other persons who were partly physicians, partly medical students, and partly laymen. It was our task to wash the block, to set up beds, to arrange straw sacks, to make up beds, and finally, I was assigned to that block as a physician.

Q. How many barracks were already at that time in Camp IV part of the sick-bay? Can you remember that?

A. Five or six.

Q. May I conclude, then, that there was actually sufficient space available in order to care for the inmates?

A. Well, the word "sufficient" is very relative. If you consider it to be sufficient when three severely ill persons had to lie in one bed 80 centimeters wide, then it was sufficient.

Q. Now, witness, how many patients were actually patients in the sick-bay at that time?

A. Unfortunately I can't tell you that.

Q. Witness, you said that five or six barracks had already been equipped as hospital barracks, and you told me before that two or three thousand inmates were in the camp at that time. Now, you must be able to tell me approximately whether there were 100, 200 or 500 patients in the sick-bay.

A. Counsel, I must correct you. You asked me how big the transport was in which I arrived, and I said there were two to three thousand, but the next day other transports arrived.

Q. Now, witness, on the 13th of February 1943 you were sent away again.

A. I beg your pardon, on the 22nd of February.

Q. Very well, on the 22nd of February. How many inmates were housed in the camp on that day, approximately? Were there two

thousand? Were there five thousand?

A. I think there were five to six thousand. I think that is more correct.

Q. And you are not in a position to state how many patients were in the sick-bay at that time?

A. I cannot give you the exact figure; I can only tell you the following:

One of the blocks of the sick-bay was used as an out-patient department. In that block there was only one room where patients were housed. That was the accident room, where fatal cases were taken, but there were only about six or eight or ten persons. Other than that, there was only out-patient treatment in that block.

Q. Where did you yourself live?

A. One moment. I haven't finished yet.

The next block was equipped for people who had internal diseases. I think there were eight small rooms in that block, each with ten to twelve beds in two tiers. The third block was designated as the so-called dysentery block. I had no access to this block, and therefore cannot tell you how many people there were in it. The fourth block at that time was equipped as a so-called freezing block, where people with frozen limbs, fingers, etc., were accommodated. In this block, according to my estimate—I was there a few times because my younger son was a patient—there were two to three hundred patients. The block next to it, in which I myself worked as a physician, was gradually being filled. It served for patients whose illnesses had not yet been diagnosed, and specifically for purposes of typhus observation.

Q. Witness, where were you yourself housed in Camp IV when you worked there as a nurse?

A. I was accepted into the sick-bay in the following way: One had to have a patient's card in order to be admitted. I lived in Block No. 16, I believe, which was newly erected. I think that figure is correct, but it may be wrong.

Q. You lived there and you slept there, is that right?

A. Yes.

Q. Witness, among other things, you say in your affidavit that the dishes were not washed for weeks. Now, witness, wasn't it up to the inmates themselves to clean their own dishes? I can't imagine that anyone would have prevented you from doing that.

A. I can imagine it very well. First of all, you said "your own dishes". They really weren't our own dishes. These dishes belonged to the block. Early in the morning we had to march to work; about 130 men left the block. We were given 30 dishes. These dishes had to suffice for all the inmates for a period of 30 minutes at lunch. First of all, there was no time to wash the dishes; secondly, there was no possibility of doing so, because there was no water at the Buxa plant.

Q. But then, Witness, I still don't understand how you can say in your affidavit, and I quote "the dishes were often not washed for weeks." I can understand that such dishes would not be washed for perhaps one day, but I don't quite see how the inmates themselves couldn't wash them for weeks.

A. Very well, I will explain that to you. At about six, or a quarter past six in the morning, there was the morning roll-call. Before the block personnel assembled, a number of dishes were given out, which were counted precisely. Thirty dishes. Whoever was fortunate received a dish and took it along. The person concerned had to take this dish along to the place of work.

At noon a car came along with soup, and whoever had a dish in his hand received his soup before the others. Before he finished his soup, the next inmate, who had no dish, seized the dish out of his hand, and in this dish which had just been licked -- and I mean licked -- by one person he had to get his own soup. Then there was a third inmate, who was hungry too and had no dish, and he in turn seized the dish from the hands of the second one, and very soon the half hour had passed and everyone had to go to work, and then one or two people were assigned to collect all the dishes. These dishes were put down next to all the other tools, and in the evening at about five or five-thirty, when we returned from work, one person had to carry all the dirty dishes back into the camp, and before the evening roll-call these dishes had to be given up at the office, where they were counted. There they stayed until the next morning, and in the very same condition they were given out again the next morning.

Q. Now, witness, you mentioned a Block Eldest and the people servicing the Blocks (Stubendienst). Wasn't it the task of the Block Eldest and the task of the people servicing the Blocks to see the block and the dishes were kept clean?

A. Yes, theoretically, but in practice, it was never done.

Q. But then it was no doubt the fault of the inmates themselves, if the inmates had Stubendienst in order to see to it that the barracks were kept clean, and if any of them didn't even think of cleaning the dishes in the evening, it was either the fault of the Block Eldest, who was responsible for that, or the fault of the other inmates.

A. I think other persons could be responsible for it. In order to clean something, you need water, after all.

Q. Witness, do you mean to say that throughout the camp there was no water to clean the dishes?

A. Yes, water was there, but it was strictly prohibited to drink

that water, because that water to a high percentage contained nitrogen derivatives. Whoever was caught drinking such water was beaten immediately. One could have washed the dishes with that water. Nobody did that, however, because it was prohibited to bring this water in contact with the dishes.

Q. Now, Witness, how about the kitchen of the camp? Where did it get its water?

A. Counsel, I am not acquainted with the technical installation of the camp. I assume that the water was condensed, that water which was derived from the steam from the central heating system.

Q. That is an assumption on your part.

A. Yes, it is.

Q. Under No. 5 of your affidavit you say that the inmates were allowed to be sick only for a period of fourteen days. You say that this was the maximum sick leave for which the I.G. would pay. Did you ever see a directive or order from the I.G. from which you derived that assumption?

A. No, Counsel, I never saw a letter. But I frequently heard that the camp physician, Dr. Kitt, went to the head physician of the sick-bay and to the Camp Elderst and said to him, "The I.G. Farben needs people. Whoever is fit to work must get out of the sick-bay." This order even referred to the personnel caring for the sick, and I myself became a victim of that order — on the 13th of December, because I was thrown out of the sick-bay as a physician and put to hard labor.

Q. Witness, you have testified that on the 13th of December, 1942, you entered the sick-bay.

A. I am sorry. I made a mistake. I meant to say the 13th of January.

Q. Do you know that the SS physician did not receive his instructions from the I.G. but received them from the Standortarzt Auschwitz, and that he in turn received his orders from the chief physician at Berlin?

A. I could not possibly have known about that, because as an

inmate I could speak to the camp physician only if he asked me something, and I can only repeat what I heard myself.

Q. And you mean to say that no inmate stayed in the sick-bay for longer than two weeks, is that your opinion?

A. I beg your pardon. That is not only my opinion, but that is actually my experience during the time when I myself was in the sick-bay. I myself was ill in the sick-bay with pneumonia, and although my friend Dr. Herrmann, who is now a physician in a provincial town in Czechoslovakia, treated me, he said to me after fourteen days, "I am very sorry; you are not well yet, but you must get out."

Q. Is it still your opinion that no inmate was allowed to stay longer than two weeks in the hospital, even if I put to you that it appears from the sick-book which was submitted by the Prosecution that hundreds of inmates stayed there for five, six, eight weeks or even longer?

MR. KINSHOFF: The Prosecution objects to the testimony of the Counsel, which is incorrect as a matter of fact.

THE PRESIDENT: Well, the Tribunal will ignore and disregard the voluntary remarks of counsel. You may go ahead.

Q. You then go on to say that when the inmates marched from the camp into the I.G. plant selections took place. Did you yourself experience a selection?

A. At the Buna plant I experienced three or four such selections. The first one --

Q. Witness, you have answered my question. I just wanted to know whether you were a witness of any yourself. You don't have to say anything else about it.

A. The first selection began in the middle of November --

Q. Middle of November, 1942?

A. Yes.

Q. That was when the inmates marched out of the camp, is that true?

A. Yes.

Q. Were civilians present?

A. Yes.

Q. Witness, is it not possible that the civilians were just picking up newly-assembled details of prisoners who did not yet know where they would work in that huge plant, and that it was for that reason that civilians were present near the gate of the camp?

A. Counsel that cannot be assumed. According to signs which were put up everywhere along the terrain, civilians had no access to the camp. Civilians couldn't even enter the camp proper. Whenever civilians did enter the camp they were always highly placed personalities, accompanied by the camp commandt or the camp physician or both.

Q. Witness, ---

THE PRESIDENT: It is necessary to admonish you that Counsel is the most frequent violator of the admonition of the Tribunal. You are following the witness's answer too quickly, without giving the translation staff an opportunity to function.

DR. SEIDL: I shall endeavor to make the pauses between questions and answers longer.

Q. Witness, why should it be possible for an engineer of the I.G. who was assigned to a new detail of inmates or an engineer belonging to a big firm like A.E.G. to stand outside the gate of the camp and accompany the Kapo and the entire work detail to the construction site?

A. Counsel, the distribution was quite different. Every Kapo received his orders at the Kapo roll-call. He was told, "You have to be on Section E-5 or E-30-and-so at such-and-such a time with your detail." Only in the plant itself was the detail assigned to the person concerned and not in the camp.

Q. I am now turning to another point, the question of food. Witness is it not true that, in addition to the food which you mentioned, twenty-five grams of margarine were handed out daily as one of your country-

men, Mr. Tauber, has testified?

A. Counsel, let me tell you the following: One cube of margarine weighed half a kilogram. This cube of margarine was cut with a wire net, by its length and by its breadth, into forty-nine parts. And only one deka-gram — that is ten grams — was actually issued to each person. This little piece, the length of the cube and one-seventh as long and one-seventh as wide, was the daily portion, provided that it wasn't decreased illegally.

Q. What do you mean "illegally"? The distribution of food was the task of the Block Eldest in the individual blocks, wasn't it?

A. Yes; that, of course, does not exclude the possibility that not everything was handed out which was supposed to be handed out. Of course, things could have been stolen.

Q. Do you mean to say that the inmates stole among themselves?

A. Yes.

Q. In your affidavit you also say that there were only two latrines in the camp. Isn't it true, witness, that there were two toilet barracks in the camp?

A. Well, that is what I meant by latrines.

Q. Well, there were two barracks which were used as latrines.

A. Yes, they were covered latrines, situated in a small barrack.

Q. Then you go on to speak of inmates who were injured at the I.G. Plant in accidents. Is it not true that every detail, every large detail of inmates, was assigned a first-aid man from Camp 4, whose task it was to administer first aid?

A. That was not true in my time.

Q. Where were you sent when you left the Konowitz camp in February 1943?

A. I was sent to Block 49, the sick-bay of Auschwitz.

Q. You mean the concentration camp Auschwitz?

A. Yes, I am talking about the main camp Auschwitz.

Q. Was that a large hospital?

A. The sick-bay at that time, I think, included five or six blocks. These were the blocks belonging to the main camp.

Q. But in the course of the years it was enlarged.

A. You can't say that. It varied. Sometimes it was enlarged and sometimes it was made smaller, according to need.

Q. There was an operating room there, is that true?

A. Oh, yes, a number of operating rooms were there. They were just wooden shacks. A wooden partition was tacked up in a room and operations were performed there. Later, in Block 20, a fairly well-equipped operating room was set up, which perhaps complied with the needs of a front-line operating room.

Q. There was x-ray equipment in that hospital, was there not?

A. Yes.

Q. And there was also equipment for physiotherapy, is that true?

A. As far as that goes, I saw only heat appliances.

Q. You then were sent to the concentration camp of Birkenau, is that correct?

A. Yes.

Q. And there was a hospital there, too. Is that right?

A. Yes.

Q. Do you have any idea of how many inmates were housed in that sickbay at Birkenau?

A. Yes, I can tell you that. This sickbay, during the year and a half that I was there, varied between one barrack and two barracks. In other words, the sickbay was always adapted to the needs of the camp. I personally was in charge of one of these barracks for a while. I don't know whether you ever saw such a barracks. It was.....

Q. Witness, it is not necessary for you to go into details. I only wanted to know how big the hospital was.

A. Well, I wanted to answer your question.

THE PRESIDENT T: Gentlemen, we trust it will not be necessary to admonish you again, but we just can't have this too rapid repartee between you. That applies to both of you. Go ahead.

A. I only wanted to reply to your question. I myself was for a time the head physician of one of these barracks, where there were typhus cases. I was in charge of eight hundred patients. At that time there were approximately sixteen thousand persons in the camp.

Q. There was x-ray equipment in that hospital, was there not?

A. Yes.

Q. And there was also equipment for physiotherapy, is that true?

A. As far as that goes, I saw only heat appliances.

Q. You then were sent to the concentration camp of Birkenau, is that correct?

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Q. And there was a hospital there, was that right?

A. Yes.

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A. Well, I wanted to answer your question.

THE PRESIDENT T: Gentlemen, we trust it will not be necessary to admonish you again, but we just can't have this too rapid repartee between you. That applies to both of you. Go ahead.

A. I only wanted to reply to your question. I myself was for a time the head physician of one of these barracks, where there were typhus cases. I was in charge of eight hundred patients. At that time there were approximately sixteen thousand persons in the camp.

Q. Is it not true that, unlike the concentration camps, Auschwitz and Birkenau, Camp IV of the I. G. succeeded in avoiding the spreading of epidemics, in particular typhus?

A. In December 1942, a quarantine area was set aside on the far side of the camp from the street. This quarantine area included four to six blocks. I can't give you the exact figure, because every access was strictly prohibited. New arrivals were interned in this quarantine area, for three weeks. I know that at that time cases of typhus were discovered in one of these quarantined transports. On the next day the entire quarantined transport was removed, and it was generally said that they were sent directly to the extermination camp Birkenau. In this way, Counsel, epidemics were frequently prevented.

Q. You say, "It was said."

A. Yes.

Q. You know that only from hearsay, then?

A. I know that only from hearsay. However, I do know that in December 1942, in the women's camp, three thousand typhus patients, women, and among them my own daughter, were sent directly to the gas chamber. I also know.....

Q. Witness, excuse me for interrupting you. You don't mean to say that these three thousand women were at Camp IV Monowitz?

A. I emphasized that it was Birkenau.

THE PRESIDENT: Counsel.....counsel.

You have answered the question, and it should have been possible, we think, to have answered it much more briefly.

Ask another question.

A. I have no further questions.

DR. DIX: Dix.

CROSS EXAMINATION

BY DR. DIX:

Q. Dr. Vitek, let me ask you, were you informed of what food the I. G. had to give every inmate daily?

A. I do not know that.

Q. As a result of your activity, do you know at what time of day the food was distributed by the SS to the Kapes?

A. The food was supposed to be distributed at twelve o'clock at the place of work.

Q. I am speaking about food distributed by the SS to the block eldest, not the Kapes. I made a mistake. When did the block eldest receive the food for their block?

A. The noon meal was distributed starting from eleven-thirty.

Q. I am speaking about the food distributed in the camp.

A. Well, I am speaking of that, too.

Q. I am not talking about the noon meal. I am now speaking about the block eldest.

A. Yes. Well, I am referring to the days when there was no work, Sunday, for instance. I am speaking of the days.....and I think it happened only twice while I was there.....where people did not go to work, when I worked in the block, then the food was distributed between eleven-thirty and twelve. Other food, bread, and evening rations, and so on, was distributed in order to be in the block before the roll-call, that is, before six o'clock before the details came back. Then there was the evening roll-call, and then after the roll-call the block eldest distributed the food.

Q. And after what roll-call was the food for the day distributed? After the morning roll-call?

A. Yes, that is right.

Q. Witness, I have one further question. You stated yourself that the SS and the camp functionaries stole large amounts of food. At least you heard about that, didn't you?

A. Yes.

Q. One more question. Do you know when the air raids on Monowitz started? Or don't you know that....because you were in Auschwitz?

A. I am afraid I can't tell you that.

DR. HOFFMANN: Hoffmann.

CROSS EXAMINATION

BY DR. HOFFMANN:

Q. Doctor, you said you were at Birkenau?

A. Yes.

Q. We know from the trials that gassing was going on at Birkenau. Did you know that, too?

A. Yes, certainly.

Q. Is it possible that inmates participated in such gassings, or do you think that was impossible?

A. Inmates did not participate in the gassing itself. The inmates participated in the burning of the gassed bodies. This was the so-called Sonderkommando (special detail).

Q. Mention has been made here that Kapes said that they were present at the gassing. I didn't think that was credible.

A. That cannot be assumed.

MR. MINSKOFF: We object to the question. It furnishes information and does not ask a question.

THE PRESIDENT: I am sorry; I didn't understand your objection.

MR. MINSKOFF: We object to the question which furnishes information rather than asking a question, particularly information that is inaccurate.

THE PRESIDENT: Well, the objection is overruled.
BY DR. HOFFMANN:

Q. Witness, under No. 3 of your affidavit you speak about the treatment of diarrhea. You say that a printer, Klimek, was in charge of this treatment. You designate him as a Viennese Social Democrat.

A. Yes.

Q. I gain the impression from this passage that you do not remember him very well, or am I wrong?

A. Counsel, I should like to answer that question somewhat at length, if I may.

Q. Well, I don't know whether the Tribunal will permit you.

THE PRESIDENT: The Tribunal will not permit you to make a longer answer than is necessary for a direct answer. Make it as brief as you can to answer the question, please.

THE WITNESS: Very well. Klimek was a very decent human being, and I have nothing to say against him. I only object to the fact that in the Buna camp, in spite of the presence of many physicians, laymen were in charge of medical treatment.

DR. HOFFMANN:

Q. When you say at the Buna camp, do you mean the camp itself?

A. Yes. We called the camp, Buna. It was generally called Camp Buna.

Q. Now, witness, you say that you have nothing in general against Mr. Klimek. Couldn't you show him the right procedure, being a physician yourself, and couldn't you explain to him how to do it properly?

A. Counsel, there was a certain chain of command. The block eldest was taboo. He was a block eldest, in charge

of the treatment, and I was just an inmate. I couldn't do anything.

Q. Witness, was the power of the block eldest really so great? After all, they were inmates themselves, were they not?

A. Counsel, don't you know who the block eldest generally were? Haven't you ever heard about the green triangles?

Q. Yes, but.....

THE PRESIDENT: Witness, you have the procedure reversed. Let counsel ask the questions and you try to answer them. Go ahead, ask another question.

BY DR. HOFMANN:

Q. Witness, we have indeed heard about green triangles here, but we have heard of red triangles, too.....and I can well imagine that a man who was a Social Democrat would wear a red triangle according to what we know here, and in particular, all inmates wearing a red triangle always treated other inmates very well, as far as we are informed here. That is why I ask you again, why didn't this red-triangled person treat you as one would assume?

A. Possibly because he didn't have any other possible method of treating people. He had only one very limited drug for diarrhea at his disposal. The so-called Bolus Alba. From this Bolus Alba drug he developed a method of treatment, as a layman, and as a layman, he had a lot of medical knowledge. He was very well read.

Q. But what he did was not very successful?

A. No, it was of no use at all. In the main camp nothing could be done either. There a physician was in charge, and he couldn't do anything either, because no drugs were available, and no diagnosis was made.

THE PRESIDENT: The Tribunal will at this time rise

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until one-thirty.

(The Tribunal recessed until 1330 hours.)

AFTERNOON SESSION
(The hearing reconvened at 1330 hours)

THE MARSHAL: The Tribunal is again in session.

BY DR. HOFFMANN:

Q. Doctor, before the recess, we left off when you said that the block-elderst Klimek was a well-meaning person; that he had acquired some medical knowledge but that he was not an approved physician and that he could not deal adequately with the cases of diarrhea because no medicines were available.

A. Yes, I had said that.

Q. Witness, to support your memory I should like to tell you that we had an inmate physician here as a witness who stated, when asked by defense counsel that these medicines, which he also admitted were not available, were to be requested from the medical department of the SS. Would that be correct, according to your opinion?

A. Yes, that would be correct, but that didn't mean that requests were complied with, indeed.

Q. But the SS medical department would be the competent authority to turn to?

A. Yes.

Q. Witness, you testify that you were forced to drag the bodies of those who had died during the course of the day, to the roll call place. It is, of course, true that these dead people had to be carried back to the camp, but why did you have to drag them to the roll call place and drag them with you?

A. Because the people who were counted in the morning were counted at the morning roll call and again at the evening roll call and because both numbers had to tally regardless of whether people were alive or dead.

Q. That was an institution of the SS as a measure that they had taken for their own lists?

A. I can't say that. I don't know who ordered it, but since

apparently the SS was responsible for the strength reports, it was probably the order of the SS, but I cannot say that for certain.

Q. Witness, under number 3 of your affidavit you give a very exact minimum temperature of freezing for twenty-six degrees.

A. Yes.

Q. Do you have a definite reason to say that there was a temperature of twenty-six degrees prevailing, or do you just want to say in general, that it was very cold?

A. No. The lowest temperature in that winter of 1942/1943 was twenty-six degrees below zero centigrade-degrees, and when, on that day, most cases of freezing had occurred, the order was issued that no work should be done at a temperature of lower than minus ten degrees.

Q. Who issued that order, Doctor?

A. The camp administration, to all appearances.

Q. May I ask you further, in paragraph 5 you describe the customs that prevailed in the sick bay of the hospital. From that I could see that according to your opinion in the sick bay no selections took place, but that people were normally transferred to Auschwitz from the sick bay and that the selections took place in Auschwitz.

A. Quite so. The exit selections were executed in the Buna Plant, but not in the sick bay. However, the seriously sick persons were transferred to the main building in Auschwitz in the hospital.

Q. But the hospital in Monowitz was not responsible for what happened to people there, but the people in Auschwitz were responsible?

A. Yes, but I want to emphasize that it was a logical consequence of what happened in Buna.

Q. May I ask you whether, in your opinion, it would not also happen that sick persons, who had been transferred from Monowitz to the hospital in Auschwitz, some times were treated, and if they were again fit for work they were not gassed?

A. I can answer you but by describing my own fate. On the 22nd of February, I was transferred to the hospital in Auschwitz as a seriously

sick person. After my time of fourteen days had elapsed and I had slipped through a selection, I worked, although I was sick because I knew that the next selection would get me. My youngest son, who came after me and who was in the neighboring barracks was not so lucky because he became a victim of the same selection where I slipped through, and was gassed.

Q. And that happened in Auschwitz?

A. Yes, in Auschwitz.

Q. I have no further questions.

BY DR. DRISCHEL (Defense Counsel for Defendant Ambros):

A. Dr. Vittek, you have stated just now that in the sick bay itself no selections took place?

A. That is in the sick bay in Buna, in Monowitz, yes.

Q. Dr. Vittek, do you know Dr. Waitz who was a physician there?

A. No.

Q. Do you know the clerk of the hospital, Rausch?

A. I may know him.

Q. If I put to you that these witnesses, contrary to your statement, spoke of selections which took place only in this sick bay, perhaps you may be mistaken, or perhaps they are mistaken?

A. One of your colleagues told me that I was in Monowitz a relatively short period of time, and I can only make statements about the time I was there. I don't know what happened before I came or after I left.

Q. If I put to you further that these witnesses did not say anything about selections at the exit gate, is it possible that you could have made a mistake?

MR. MINSKOFF: We object to a question of that type where the hypothesis is obviously incorrect.

THE PRESIDENT: Well, whether the hypothesis is or is not correct would depend upon the record and we might get into a long controversy about that. If the question is not sustained by evidence of record, it

would serve no good purpose and would, no doubt, do much harm. Rather than conduct a collateral inquiry into that subject, the objection is overruled.

You may answer if you can, Mr. Witness.

THE WITNESS: I can only repeat that during the time I was in Monowitz, no selections took place in the sick-bay, but I myself say three selections at the gate and I went through three selections at the gate myself.

BY DR. DRISCHEL:

Q. Dr. Vitek, in the case of those selections, as you call them, were there any people from Farben present?

A. There were always civilians present in the selections.

Q. But you cannot say with certainty who those people were?

A. Certainly not. I don't know them.

DR. DRISCHEL: Thank you very much, Mr. President.

DR. SEIDL(Defense Counsel for Defendant Duerrfeld):

Q. Witness, you said that those selections took place at the gate of the camp. Isn't it true that the details, numbering in thousands, left the camp without interruption and that they marched without any interruption? Is that correct, and I should like you to tell me how the incident happened that you describe as selection at the camp gate?

A. I can explain that to you very well. Under normal circumstances the detail marched out to work in ranks of five and passed an SS man, in one line, so that he could count the ranks of five and then he reported to the man who took down the list, "641 men, Detail 24", for instance. When the selections were taken, there was a different method of marching. Then a group of elders in the camp, senior people, camp commanders detail commanders and two or three civilians stood at the gate, and now the labor detail had to halt at a certain distance before the gate and each rank of five filed slowly past this group of people.

Q And what happened further?

A The camp physician and Senior of the camp after they had consulted each other, one of the civilians said, "Number three or number five march over to the left." Then the other three people kept on marching and the two pulled out and remained at the gate. Then the next file came and one said, for instance, "The second and fourth step out." And then the second file would file in with the first file and the completed file would pass the group of people.

Q And that's how it was done with five or six thousand inmates?

A Yes. The work began one or two hours later on those days.

Q Those inmates were all clothed, isn't that right?

A Yes.

Q According to what aspects or criterion would the camp physician want to select those people?

A According to appearances. If one was too great a "Moslim" I suppose, Counsel, you know what a "Moslim" is, - then he was taken out without any physical examination.

Q Witness, I must tell you that according to statements we heard those selections were made at the camp gate in order to pick out inmates who were ill.

MR. MINSKOFF: Objection sustained.

BY DR. SEIDL:

Q How many inmates were picked out in one of these selections that you witnessed yourself?

A Doctor, I could only see what was pulled out from the people who were ahead of me. I didn't see anything that happened behind me.

Q How many did you see yourself?

A Thirty to forty men but that depended in what detail I was working. If I was working in detail #1 then I saw only a few but if I was in detail #24 then the number of people that had been pulled out was much larger.

Q And what happened to those thirty or forty people?

A They marched directly from the gate under the guard of the SS to Birkenau.

Q Did you see that yourself?

A I cannot have seen that, Counsel, but I had acquaintances there whom I searched for. I had acquaintances in the office in Auschwitz who helped me look for those people but those people were not listed therefore they could not have gone anywhere else.

Q I have no further questions.

MR. SPRECHER: Mr. President, I only wanted it observed that there was no re-direct examination and then there was repetition of examination by defense counsel. Now, we have no objection in principle but on the whole we think it's a correct observation that when one defense counsel makes his cross examination, that's the story.

THE PRESIDENT: That in the main is good principle. The Tribunal has not applied any very strict rule about the order of the examination but I may say, I think, on behalf of the members of the Tribunal that we feel now that the cross examination of this witness has been quite exhaustive and from the Tribunal's standpoint we do not look forward to finding very much help from any further cross examination. If there is any member of the defense counsel who think one or two questions important we will indulge it but you know we think you are about ready to call another witness. Go ahead doctor.

BY DR. HOFFMAN:

Q I have only one question, your Honor. Dr. Vitek, you described to us just now how the selections took place and you also stated that civilians were present at these occasions. I ask you now can you imagine, and please try to answer this question although I respect your situation, can you imagine that those civilians wanted to prevent those inmates from working any further for technical reasons or is there no doubt in your mind that these civilians also were aware of and included the terrible destiny of gassing? Please consider this question and

think about it. It is clear that there was no mistake from your point of view. But is that equally true with reference to the civilians whom you saw there?

A Counsel, I don't think it is decisive for the Tribunal what is in my mind. It is the practical result which probably will be decisive.

THE PRESIDENT: Any further cross examination of this witness?
Any re-direct?

MR. MINSKOFF: No re-direct, sir.

THE PRESIDENT: Mr. Witness, you are excused and the Marshal will escort you out.

Call your next.

MR. MINSKOFF: If it please the Court, the Prosecution's next witness is Professor Berthold Epstein.

THE PRESIDENT: Bring in the witness.

MR. MINSKOFF: The affidavit appears in Book 78 as NI-5847, Prosecution Exhibit 1485. It appears on page 118 of the English and 146 of the German.

(A witness, Professor Berthold Epstein, took the stand and testified as follows:)

THE PRESIDENT: Mr. Witness, you will remain standing and I shall administer you the oath that prevails in your country. Raise your right hand, say I, and state your name.

THE WITNESS: I, Professor, Dr. Berthold Epstein.

THE PRESIDENT: You will now repeat after me - swear a pure oath, that to all questions asked here before this Tribunal I shall answer only the truth, nothing but the truth, and that knowingly I shall withhold nothing.

(The witness repeated the oath.)

THE PRESIDENT: You may be seated.

Now, Mr. Witness, has the use of the light bulbs in front of you been explained to you?

A Yes.

THE PRESIDENT: Just one thing further. Will you please try to remember to speak slowly and to pause between the question that counsel asks you and your answer so that the translation can get to us. And, further, do not feel called upon to make extensive answers. Make them as simple and as direct as possible and leave it to counsel if he wants more details. If you will bear that in mind it will help us very much. The witness is with the Prosecution.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q Professor Epstein, what is your full name?

A Dr. Barthold Epstein, Professor Doctor Barthold Epstein.

Q And where do you reside?

A In Prague, Smichov, Fibichova, 12.

Q With respect to your affidavit which has been introduced as Prosecution Exhibit 1485 are there any corrections or additions that you wish to make at this time?

A None that I know of.

Q No further questions by Prosecution. The witness is with the defense.

THE PRESIDENT: Now, gentlemen, as best you can in the conduct of this cross examination try to refrain from going over the same field twice and let's have this cross examination as brief and direct and to the point as the situation entitles it to be. Counsel may proceed with the cross examination.

CROSS EXAMINATION

BY DR. SEIDL for Duerrfeld:

Q Mr. President, I shall try to make the cross examination as brief as possible although that is somewhat difficult since many paragraphs in the affidavit of this witness are the same as those in the affidavit of the previous witness so it is really cumulative evidence.

Witness, during the war you were in Camp IV in Monowitz?

A Yes.

Q When did you get there?

A I arrived on 16 December 1942 and I remained there until the 23 August 1943.

Q Camp IV in which you were housed was under SS administration, is that right?

A I don't know who was in charge of the administration of the camp. I only know that the SS had chief supervision over us.

Q The SS guarded the camp?

A Yes.

Q The roll call was taken by SS leaders, is that right?

A Yes.

Q And besides that there were inmates who were working in the so-called self administration of the camp, that is Senior of the camp? The Barracks Senior was also an inmate?

A Yes.

Q State what your activity was in the camp.

A I was physician of the Out Patient War. I had to examine the people who suffered from internal diseases.

Q How large was the hospital when you got there?

A Above five barracks as I remember. I do not remember how many people were there. I don't think they were many people since the population of the camp was small, only about 2000, as I remember.

Q How is it possible, doctor, that two or three inmates had to sleep in one bed if the entire population was not large?

A I spoke of the period when I came to the camp. Later it increased - in June, July, and August there were more. And besides that when there were only a few people some of the barracks were closed off and in the winter of 1942-43 when coal had to be saved, they closed off certain barracks. That's the reason why even with the small population people were over-crowded and that was also the reason why sickness spread, because we had only a small space to treat certain diseases.

Q You yourself worked as inmate physician?

A Yes.

Q Is it correct that the SS physician only came to the hospital every two or three days and that the management of the hospital was more or less the affair of the inmates?

A As far as I remember during my time the SS physician came there regularly. It happened once or twice that the doctor did not come every day but generally speaking the service was regular. If an SS doctor did not come the people could not be transported away. The physician was not very independent.

Q In your affidavit you mention the patients of the dysentery ward.

A Yes.

Q You say that those patients had to be starved for two days for medical reasons?

A Yes.

Q I would like to ask you, isn't it a well proved method and cure in medicine to keep people on a certain diet?

A It would not be in keeping with modern medicine if all people who are suffering of dysentery are treated by the same method and it would not be well to have people starve who have dysentery because they are starving. If that were the method recommended by a student who wanted to become a doctor he would not pass his examination. It happened in those instances that every patient who came to the dysentery ward had to starve for two days - that meant death for most of them. I remember that we thought with horror of sending certain patients to this Hell. Certain patients knelt before me and asked me not to send them to this Hell.

THE PRESIDENT: Mr. Witness, please recall what we told you when you took the stand. You have answered this question and if more details are desired counsel will ask you.

BY DR. SEIDL:

Q Witness, wasn't there a certain Klimsek working as a medical clerk in this dysentery ward?

A Yes.

Q Wouldn't it have been possible that this Klimek would have recommended to him certain different types of treatment?

A When we came to the camp the doctor had much less to say than the male nurses among the inmates. It didn't happen once but many times I was told, "You may be a professor but you haven't had the experience in the camp, you don't understand anything here." We tried by lectures in the camp to convert these male nurses to our point of view but it took a long time.

Q Witness, were you ever in the Farben plant?

A No, I never left the sick bay in the 8 months I was there.

Q In your affidavit you state that many of the inmates had to march a daily distance of about 8 kilometers from work and back. Do you want to maintain that assertion if I put to you that the plant was extended only over about one to two kilometers, that you cannot speak of a distance of 8 kilometers.

A I was speaking of the route from the camp to work. That was about one hours walk. That's what the inmates told me not once but hundreds of times, not inside the camp itself, but the walk from the plant to the camp.

Q Behind you is a chart, Mr. Witness, and would you please turn around and tell me where Camp IV is and where the Farben plant is located?

A Excuse me. I am not well oriented on that.

THE PRESIDENT: Mr. Witness, please. If you care to you may stand up and study the map but it will be necessary that you be seated before you answer that so the microphone can pick up your testimony. Don't forget about what I said about being seated before you talk because we can't hear you.

A I can only repeat what I said before. I was assured time and again - they told me, that the march from the camp to the plant was approximately 4 kilometers.

THE PRESIDENT: Counsel, just a moment, please. The witness had

indicated that he does not claim any personal knowledge of this and is only telling you what someone else said - hearsay - which would not serve any purpose in your pursuing that any further in view of the limited knowledge the witness admits.

BY DR. SEIDL:

Q Then I have to put another question to you. Would you not say that fence around the Farben plant began immediately on the other side of the street and ran north of Camp IV?

A As far as I know the camp was not in the direct proximity of the plant. It may be that certain people worked in the immediate vicinity of the plant but I saw again and again, according to the wounds on the feet, that they must have marched 4 kilometers. We waged a battle to get shoe laces because the people were forced to march in ill-fitting wooden shoes without any shoe laces. We achieved it after a lot of effort to have shoe laces furnished.

THE PRESIDENT: Please - you have answered the question. Be patient and wait for another question.

BY DR. SEIDL:

Q Witness, you say that inmates were brought into the sick bay who were shot. Were these inmates shot in Camp IV by the SS or were they shot anywhere else. Do you know from your own observation about that?

A I saw people who had been shot and I, of course, inquired and asked who shot them.

THE PRESIDENT: Now just a moment - you have answered the question. If counsel wants to know any more he will ask you.

BY DR. SEIDL:

Q You yourself never saw anybody shoot an inmate?

A No.

Q You can base your statements only on stories of third parties?

A Also I base them because I saw people who were shot.

MR. MINSKOFF: If it please the Court, the testimony of a doctor

as to the stories patients told him how injuries occurred is quite relevant and not hearsay at all.

THE PRESIDENT: Ask another question, counsel. I am not sure that I understand your last question myself.

BY DR. SEIDL:

Q You state further that inmates were allowed to stay in the hospital only two weeks. Did you see any written orders about that? Who issued these orders and what do you know about this?

A When I took over service in the camp I was given my directives and was told only people would be admitted whose sickness would probably last no longer than two weeks and I know that that was handled in that way.

Q Do you mean by that that those patients who required longer treatment would be transferred to the large hospital in the Auschwitz camp?

A Yes.

Q I have no further questions.

THE PRESIDENT: Any further cross examination of the witness? Any re-direct examination?

RE-DIRECT EXAMINATION

MR. MINSKOFF: Just one question, if it please the Court.

THE PRESIDENT: I will say to Prosecution what we have said to the defense. Will you bear in mind when you do ask additional questions you may be prolonging the examination by leading into different fields but let your judgment ---

MR. MINSKOFF: Just one question with reference to the last question put to the witness.

Those patients who were sent to Auschwitz, what happened to those?

A The people who were sent to Auschwitz came to the hospital and they were treated according to the method customary in the hospital at Auschwitz. As far as I know in the hospital in Auschwitz selections

took place regularly and those considered incurably sick and seriously sick and very emaciated persons were sent to the crematorium for the purpose of burning. That was well known in our place in Buna and people were very frequently horrified when they were sent to Auschwitz.

THE PRESIDENT: Just a moment, are you asking this witness anything about something that he supposedly knows or are you eliciting hearsay from him, or general information - what is the basis of this information?

MR. MINSKOFF: General information for he was in another camp as well.

That was the only question we had. No further questions by the Prosecution.

THE PRESIDENT: Any further cross examination?

Mr. Witness, you are excused.

Are you ready to call another witness?

MR. MINSKOFF: If it please the Court the Prosecution will proceed with further document Books. Document Book #80 is the following book.

The Prosecution -- I am sorry, do you have your books?

THE PRESIDENT: Yes, we have our books.

MR. MINSKOFF: Prosecution offers NI-12012 as Prosecution Exhibit 1528.

DR. FLAUCHSMER: Mr. President, the Prosecution has now submitted NI-12012, the first document of Document Book 80. I want to object to the introduction of this document and against the introduction of all other documents in Books 80 and 81 because these documents in my opinion are irrelevant for evidence.

THE PRESIDENT: Now counsel we will consider that proposition but will you and your associates now as directly and pointedly as possible point out the basis of your objections. Then we shall permit the Prosecution to briefly answer you and allow you to conclude the argument so that we can have an orderly presentation of this subject. Go ahead and give us your view.

DR. FLAUCHSKER: All these documents in Books 80 and 81 deal with the allocation of workers, and especially concentration camp inmates, to the GmbH Fuerstengrube and Janinagrube. They are two mines in eastern Upper-Silesia. Fuerstengrube is a completely independent corporation, a GmbH, in which Farben was only participating with certain capital. The business management of the corporation mentioned is completely independent. It is its own management in the sense of the law for the regulation of National labor (Gesetz fuer die Regelung der Nationalen Arbeit). Farben is not represented in the business management, nor were they participating in the operation of the enterprise.

The Janinagrube is an independent enterprise, a foreign enterprise, whose administration was transferred to the Fuerstengrube by way of a commissioner. The possibility for the allocation of manpower in the case of Fuerstengrube and Janinagrube is solely that of the independent administrative organizations of those enterprises. None of the defendants here, nor any other representative of Farben, participated in this responsibility according to the law or "de facto". That can be seen that the GmbH Fuerstengrube was never represented on the Advisory Council of the Beirat of Farben.

In the case of enterprises in which a third party has only participated with a certain amount of capital, a certain line of demarcation must be reached. A criterion for this line of demarcation can be only whether the person who has a share participated in the business administration or management of the enterprise. The defense has already in the case of two other cases, that is the cases of DAG and the firm Kalle, already presented this point of view to the Tribunal. The Prosecution then withdrew the documents objected to in the case. The case here is exactly the same. These documents are irrelevant for the reasons I mentioned.

I only want to mention on the side that it would also serve to expedite the proceedings not to introduce these documents for the material in this trial would be increased considerably. In conclusion,

to sum up, the documents are not relevant for legal or de facto reasons.

THE PRESIDENT: Now, does any member of the staff of counsel for the defense desire to say anything further in the first presentation here? Then, we will hear the prosecution, and let it be pointed out to the prosecution that certain statements have been made here of a factual nature that might be important in the consideration of the Tribunal as to whether or not these documents are competent; since the Prosecution is offering the documents, the burden is on the Prosecution to enlighten the Court upon some theory — with respect to some theory to make them competent evidence. So, please take note of the things that counsel for the defense have said with reference to the management of these corporations.

MR. LINSKOFF: If it please the Court, with respect to the documents contained in Document Books 60 and 61 which deal with Fuerstengrube and Janinagrube, it seems very clear to the prosecution that the complete control and the complete management and the complete supervision over these mines was in the hands of I. G. Farben, and the defendants before this Court are themselves involved in numerous of the documents contained in these two books, showing their control, showing their supervision, showing allocation of labor, dealing with the financing, dealing with the entire complex which we refer to in these two books. There is no question of any technical control here, or any stock ownership by which we attempt to tie the defendants to these two mines. There is a direct participation in an active management of both mines. One through the ownership control and the other through an administration control. That is, it never had an ownership, but they were appointed as administrators, and they have the first firm, Fuerstengrube, act as administrators for the second firm Janinagrube. It is clear from the documents the persons named as defendants in this case were active and participated in the management and control of both of these mines. There is no question here of some technical participation on the part of I. G. Farben.

THE PRESIDENT: Counsel, your situation is a little bit different than that of counsel for the defense in this respect: They make the charge, they say the documents do not show control. You say it does, that they do. Now, the burden is on you to point that out, and if there is any particular document here that will sustain your theory, you are at liberty to direct our attention to them, and we can look at them in a preliminary or cursory way and arrive at some conclusion. Are there any particular documents with reference to two industries which you think are significant in sustaining your theory of competency?

MR. MINSKOFF: If it please the Court, if I am allowed just three or four minutes, I can list the documents for Your Honor.

THE PRESIDENT: You can take all the time you need for that purpose within reason.

MR. MINSKOFF: Thank you.

If it please the Court, the Prosecution hadn't expected that the documents would be contested on these two mines, and the first document which I can call of to Your Honor's attention is the third document in Book No. 80. It is NI-11117, which is the minutes of the founders' meeting for the I.G. Auschwitz. They discuss the acquisition of this company to work for their Auschwitz complex. Dr. Bueteifisch was in charge.

THE PRESIDENT: Does that show anything in the way of participation in the management, or is it --

MR. MINSKOFF: That is the first one, Your Honor, it just shows the founding of this company.

THE PRESIDENT: What does it show with reference to Farben's connection with that in a general way?

MR. MINSKOFF: They founded the company with a 51 percent Farben interest, controlling it until it was taken over. In addition to that, they guarantee for about 23 years, I believe, it was the four percent profit to the minority holder. All the risk was Farben's risk.

Well, the very next document is the minutes of a Vorstand meeting

with the entire Vorstand present, and Ambros and Buetevisch report in detail on the new plan. It merely reports on the meeting in detail.

In the Document 12014 which is the following page the file note shows the distribution of Buetevisch, Ambros, and Duerrfeld. That is on the second mine, the Janina mine, and they point out that they want to acquire that mine but it might be better tactics to be purchased through Euerstengrube so it wouldn't create an appearance of IG wanting that mine.

Then, in any of them — in the following document book, in 81, Document 4, that is the fourth document now, NI-10886, it points out that I.G. Farben Auschwitz takes over the labor camp Waldeck which supplies all the labor for the mines.

And finally, I might call Your Honors' attention to page 10, NI-10535, where the question of even so small a matter as the acquisition of boots for the persons who were working in these mines, with Duerrfeld himself who writes to Duellberg suggesting that boots be purchased for the miners.

If it please, Your Honors, we could go through the various documents and point out the management was all the way through, the Farben management. There was nobody else managing those mines.

THE PRESIDENT: We don't want to go into too great a detail, but if you can select one or two or three of the documents and call our particular attention to it, when you think it supports your theory.

MR. MINSKOFF: The last one I called your Honor's attention to, NI-1035, it is a letter from the defendant Duerrfeld to Doellberg - -

THE PRESIDENT: What book is that in, please?

MR. MINSKOFF: It is Book 81, if it please, Your Honor.

THE PRESIDENT: It is not in there, you are wrong about that, and there is no document by that number listed in Book 81.

MR. MINSKOFF: NI-10535.

THE PRESIDENT: Yes, it is on page 46.

MR. MINSKOFF: I am sorry, I meant page 10 of the index. I am sorry, Your Honor.

THE PRESIDENT: I see.

MR. MINSKOFF: As a matter of fact, on the minutes of the construction conference which is on page 9 of the index, NI-11144, it is pointed out that "a goal of 7,200 is set for the employment of concentration camp inmates. Inmates are also employed at the plants Geunthegrube and Janina." There is no question of the act Farben played in the meeting, or the Farben management procures the inmates for the mines. As a matter of fact, it might be pointed out that there are no inmates in another one of the mines until Farben takes over control.

THE PRESIDENT: Whereabouts in this document NI-11, 144 is the meat of it, the thing you rely on?

MR. MINSKOFF: That is on 35 of the English.

THE PRESIDENT: Yes, that is the document that begins on 35 of Book 81 of the English. It is a long document, and I thought you might be able to direct our attention to some part of it which you think has some particular interest.

MR. MINSKOFF: The part which I refer to in the record, under the Auschwitz part, it appears on page 39, under the heading "Employment of Prisoners." That is page 67 of the German -- 68 of the German.

There are a number of references, Your Honor, which I just showed you one, because it shows the Vorstand meetings, the construction meetings, the foundry meetings, it appears right through the documents.

MR. SPRECHER: Mr. President, this raises a rather general question, and it has some relation back to the events of the 5th of November, Wednesday, when the Prosecution withdrew some documents with respect to DAG and Kalle and Company; and therefore with your permission I'd like to make a brief statement.

THE PRESIDENT: Very well.

MR. SPRECHER: With respect to DAG which was an old enterprise which later entered into a community of interest agreement with I.G. Farben and which was a tremendous enterprise, the fact of stock control, we feel, would entitle us one hundred percent in offering those documents as being completely relevant. Our position has not changed with respect to that.

If DAG were owned 51 percent by Farben, and it was known that that company was dealing in stolen goods, I don't think there is any jurist would have any question about the fact that if Farben had knowledge of that fact and continued through several years to support that firm, take the profits, give it what directions were necessary in order for its local management to operate, but what there would be any question but what crime was there. Here the question is not the goods that the company may sell. The question is the human bondage element. The question of labor that the subsidiary company used. If in the modern world an owning company with a controlling majority is in a position to have the subsidiary company use human slaves, and it willfully and knowingly permitted the subsidiary company to use human slaves in order to produce the goods from the subsidiary company which directly and indirectly the owning company makes its profits, certainly crime is established beyond any doubt.

However, because of the vast complex of DAG, the Prosecution is not going to re-offer any documents concerning that particular company on the ground that for what additional responsibility criminally we would establish thereby, we think the time required would be too great; and it is not essential in our case whatsoever.

With respect to Kalle and Company which is one of the original founding companies of I.G. and which was sponsored under Sparte III to one of the

defendants here, we will take a different view and either argue further or present some further documents to Your Honors in the very near future.

Now, in this case we have seen many times before that for very numerous reasons, I.G. Farben created various types of legal veils, legal curtains. In this case, the question of whether they should have the legal veil in between or not is discussed in one of the early documents, and it was decided that for purposes of dealing with the authorities, the German authorities, who as we have seen in the case of the spoliation of Poland were not in favor of any further acquisitions by Farben, would use a dummy corporation in order to get the mines it wanted in order to supply Auschwitz, another Farben concern.

Now, Your Honors, numerous of the plants in this case were owned by dummy corporations, some a hundred percent, some 80 percent, some 51 percent; but it seems to us that if this legal veiling in this case with respect to the primary responsibility for how the work got done, I think, a thing which I think the documents have shown already amply in the Huels, in Auschwitz and in the neighborhood of Auschwitz, then indeed the law has become very weak indeed not to reach out in the modern world and bring in those who are truly responsible.

MR. MINSKOFF: If it please the Court, if I can point out the one which I referred to earlier, I didn't quite have the page. It appears in Document Book 81 on page 4 of the English, the camp leader of Camp Waldeck to the labor camp liquidation office of camp Waldeck. The very first paragraph: "As requested we return the documents furnished us against issue of a receipt and beg to inform you that camp Waldeck, Fuerstengrube, was handed over to I.G. Farben, Auschwitz, on June 27, 1943."

DR. FLAEBCHNER: Mr. President, the Prosecution pointed out a few documents to the Tribunal, but the document which is the key to the question under discussion here was not pointed out here by the Prosecution, and that is Document NI-12011. That is the contract of Fuerstengrube. What can be seen from this contract? It can be seen that Farben negotiated an agreement with a large Upper-Silesian mine; according to which they will now incorporat

into an enterprise a mine in which Farben participates with a certain amount of capital. Farben did that, apparently, because it wanted to safeguard for itself a few rights of self-consumers for their plants in Upper-Silesia. In the administration of Fuerstengrube which belonged to the Fuerstlich Pless nothing was changed. The legal entity was not changed, but from the fact alone that a business relation of friendliness existed between the Fuerstengrube and the Fuerstlich Pless and Bergwerk, A.G. in Kattowitz, it is expected that the defendants here, members of the Vorstand, are to be made responsible. I believe the example mentioned by Mr. Sprecher does not apply to the present case.

We are not concerned with a camouflaged maneuver here nor with a subsidiary company. If anybody participates in an enterprise with fifty-one percent, it cannot be called a subsidiary company. Therefore, I ask that those documents which refer to Fuersten and Janina-Grube in Books 80 and 81 be excluded. In addition, I should like to remark the alleged connection between the defendants here and the Janina-Grube is even more loose and vague than the connection with the Fuersten-Grube, according to the contention of the Prosecution. The Janina-Grube was a foreign enterprise and administered by a commissioner from the 31st of January, 1943.

THE PRESIDENT: The Tribunal will take its recess a bit prematurely today to give us an opportunity to discuss this matter.

We will rise at this time.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: With reference to the objection made by counsel for the Defense to Document NI-12012, which was marked Exhibit 1528, being the first document in Document Book 80, it is the decision of the Tribunal that we shall permit the Prosecution to mark for identification only all of the documents in Document Books 80 and 81; may I repeat, for identification only. We shall permit counsel for the Defense to put in writing its specific objection to all of those documents and permit counsel for the Prosecution to give us a statement in writing of the theory upon which it considers those documents admissible in evidence and enough of the content of the documents that it considers most important to illustrate its theory as to their competency.

In the meantime the Tribunal will take under advisement its ultimate ruling as to the admissibility of these documents. If the documents are ruled to be inadmissible, no harm will be done by having them marked for identification only. If the documents are ruled to be admissible either in whole or in part.....by that I mean to say part or all of the documents.....there will be no necessity then for their formal introduction or for taking the time of the Tribunal to explain their contents.

In the meantime we shall as best we can familiarize ourselves with their contents so that in due time, by one ruling, all of the documents contained in Books 80 and 81 will be excluded or admitted, or such parts will be excluded or admitted as the Tribunal deems proper, without any further consideration of these documents so far as their formal presentation to the Tribunal is concerned.

If there are any questions that counsel has with respect

to that procedure, we should like to have you state your questions now so that there will be no misunderstanding about it.

(The President, continuing)

We shall not be inclined to impose any specific date when these briefs shall be submitted, but you may agree among yourselves as to what time you deem to be reasonable and then we shall expect that you will comply with your commitments.

MR. SP. HER: Mr. President, the Prosecution has one question. In connection with making these documents for identification, we are wondering whether or not it would not be advisable if we were granted some leeway to make brief comment concerning their purpose, both as to the admissibility question, and otherwise.

THE PRESIDENT: That will defeat the very purpose that the Tribunal has in mind. It is not to consume our time now with a discussion as to the contents of the documents, when the admissibility of the document has been passed upon. You can cover in your brief, in a general way, what the purpose of these documents may be, and then if it does become important in respect to any particular document to afford you an opportunity to say what it is, if it is admitted in evidence, we shall grant that.

Is there any further question now about our ruling?

MR. MINSKOFF: No question as to the ruling. In view of the fact that some witnesses have been called with respect to these documents, and the question as to whether they could be heard will obviously be involved in any action this Tribunal takes on admissibility of the documents, I was wondering whether a deadline could not be set so we could quickly get before this court the points for both the Prosecution and Defense, and the Tribunal can then decide in very short order which way it intends to go.

THE PRESIDENT: Will counsel for the defendant who made the objection, and counsel for the Prosecution have an impromptu conference and give the Tribunal the benefit of what time you think is necessary to present your briefs and then we will make the order, and that will put the matter to rest for the time being.

MR. SPRECHER: Mr. President, the Prosecution can be ready to present this certain memorandum on Thursday morning. The Defense, Dr. Flaschner

and Dr. Gierlichs indicate that they do not believe a repetition merely of what they said to you before the recess would be very helpful, and that they intend to make a more extensive study and that they cannot be ready with their memorandum before the end of the week.

THE PRESIDENT: Do you say by Thursday morning for the Prosecution?

MR. SPRECHER: Yes.

THE PRESIDENT: Perhaps after all, the burden is on the Prosecution here, to establish the admissibility of evidence, rather than on the Defense. The Defense has served its function when it makes objections, and casts the burden on the Prosecution. We will fix the hour of adjournment on Thursday, at four-thirty on Thursday, as the time within which these briefs may be submitted.

We shall not allow any time for answer because we have already heard you orally, and usually that suffices. We shall not expect any reply briefs or-answer briefs, and we will consider anything that is submitted to us in support of the positions of the parties that is submitted by the hour of adjournment on Thursday of this week.

Now, Mr. Prosecutor you may proceed to indicate the numbers of the documents.

Will the numbers run on chronologically, beginning with 1528 for NI 12012 through Book 80?

MR. MINSKOFF: No, Your Honor. There are a number of documents here interspersed which are already in evidence, but apart from that you are perfectly right.

THE PRESIDENT: Then call your document number and the next number.

MR. MINSKOFF: That is NI 12012 for identification now, that is 1528. NI 12011, is 1529 for identification. NI 11117 is already in evidence as Prosecution's Exhibit 1430.

NI 8078 is also in evidence as Prosecution's Exhibit 1433.

NI 10860 is offered as Prosecution's Exhibit 1529 for identification. I am sorry, it is 1530 for identification.

NI 11124 is in evidence as Prosecution's Exhibit 1444.

NI 11140 is in evidence , Prosecution's Exhibit 1501.

NI 10863 is offered as Prosecution's Exhibit 1531 for identification.

NI 12014 is offered as Prosecution's Exhibit 1532 for identification.

NI 8266 is presently in evidence as Prosecution's Exhibit 1322.

NL-8255 is offered as Prosecution Exhibit 1533 for identification.

And that completes Document Book No. 80.

In Document Book No. 81 the Prosecution offers:

NL-10170 as Prosecution Exhibit for identification 1534; and offers NL-10843 as Prosecution Exhibit 1535 for identification. The Prosecution offers also NL-12016 as its Exhibit 1536 for identification. NL-10886 as Prosecution Exhibit 1537 for identification. NL-10512 as Prosecution Exhibit 1538 for identification. Also NL-10519 as Prosecution Exhibit 1539 for identification. And NL-10520 as Prosecution Exhibit 1540 for identification. NL-10516 is offered as Prosecution Exhibit 1542 for identification. NL-10525 is offered as Prosecution Exhibit 1543 for identification. The Prosecution offers NL-12019 as its Exhibit 1544 for identification. And NL-10522 as Prosecution Exhibit 1545 for identification.

The Prosecution offers NL-10531 as its Exhibit 1546 for identification; and NL-12015 as Prosecution Exhibit 1547 for identification; NL-11654 is offered as Prosecution Exhibit 1548 for identification. NL-11652 is offered as Prosecution Exhibit 1549 for identification. And NL-11879 is offered as Prosecution Exhibit 1550 for identification.

The next document is NL-11144, which is presently in evidence as Prosecution Exhibit 1511.

The Prosecution offers Document NL-8258 as its Exhibit 1551 for identification. And NL-10535 as its Exhibit 1552 for identification. NL-12018 is offered as Prosecution Exhibit 1553 for identification. Document NL-11034--

THE PRESIDENT: Pardon me... that is 11043.

MR. MINSKOFF: I am sorry... NL-11043 is offered as Prosecution Exhibit 1554 for identification. The Prosecution

offers NI-12017 as its Exhibit 1555 for identification.

That completes Document Book No. 81.

If it please the Court, the Prosecution would like to note, and offer for identification -- although physically it is difficult to deliver the actual document to the Court at the present moment -- an affidavit of Guenther Falkenau which we would like to mark for identification and deliver to both the Defense and the Court as soon as it possibly can...

THE PRESIDENT: Can you give us the document number of that?

MR. MINSKOFF: I don't see any document number on it. I am not sure it has been given one.

THE PRESIDENT: We have no objection to that, except that it is pretty loose so far as our record is concerned. I mean the transcript... we will have to depend upon you to call our attention to that when the document is produced so that we get it on the Secretary's record and on the transcript record.

MR. MINSKOFF: Could we temporarily identify it as an affidavit of Guenther Falkenau. The NI number of it will be furnished probably later this afternoon.

THE PRESIDENT: What exhibit number do you wish to assign it?

MR. SPRECHER: Mr. President, we had not intended to offer this affidavit of the local manager of the Fuerstengrube Mine, except because of the fact that we thought it would not be too helpful until this legal question was put before you on admissibility. This document does contain direct statements bearing on that point which are crystal clear. It has not been given an NI number because we had not even intended to process the document.

THE PRESIDENT: Let the president suggest that as promptly as possible you get it into the hands of counsel for the Defense so they can have the benefit of it when they prepare their brief, and that we have the formal offer or introduction of the document until it is given an identification number, and until you are ready to give it an exhibit number. But provide counsel for the Defense with a copy, and members of the Tribunal with a copy, which will suffice for the purposes of present consideration, and then you may subsequently mark it for identification and it can take its course in the matter of its admissibility.

MR. SPRECHER: Thank you.

DR. FLAEGHSNER (For defendant Bueterisch): Your Honor, the document is not being submitted at the moment, if I have understood Mr. Sprecher correctly. Mr. Sprecher does not have the document at his disposal. What he has is merely a copy of a translation. I believe it would be far more useful to the Tribunal, if the handing over the document for purposes of identification is postponed by Mr. Sprecher until such time as he is able to furnish photostatic copies not only to the Tribunal but also to the Defense.

THE PRESIDENT: That is exactly, counsel, what we had in mind. However, we are asking him as a matter of courtesy to get a copy to you as soon as possible so that you will know the contents of it in advance.

DR. FLAEGHSNER: Thank you, your Honor.

MR. SPRECHER: Mr. President, the ruling concerning the Ruertengrube Mine, and the fact that we are now in a position where we cannot call a couple of the witnesses who would give some further material concerning this complex in the treatment of these inmates, in throwing the Prosecution's schedule off considerably. We have available as of the moment the balance of the documents on the Russian complex

and spoliation, Count 2, Count 1, Count 5, but those documents have not been announced. I presume defense counsel was to have them with him today. I have my copies, but I don't believe that counsel have theirs. And what's more, that would only take approximately one-half to three-quarters of an hour to finish. Beyond that, we have Document Book 66, which would take about fifteen minutes to put in. And there are a number of witnesses who are beyond the jurisdiction of the Court and cannot be produced in connection with Count 3, and some in connection with Count 2, at this time. We were planning to make an overall statement concerning that tomorrow morning. However, we are in the position where, apart from the document books I have mentioned, we are not in a position to go forward tomorrow. And I am not certain that we shall be able to go forward the day after that for a full day, under the present circumstances. We are approaching very rapidly the end of the Prosecution's case.

The difficulties in getting witnesses increases with geometric progression as we near the end of this case. And there is no progression with respect to any interrogatories being used instead of cross-examination, so we have no questions there.

The document book on Count IV is also being assembled as of the present time, and we have been assured that it will be ready by Thursday morning. That doesn't mean that it will be in the hands of the Defense for 24 hours so we can carry on on Thursday morning. The same thing applies to the last books on Count III-B, which have to do with the use of poison gas in medical experiments upon human beings. Now, we have also been assured that the last of those books would be delivered by about Thursday, which would mean we couldn't go on until Friday, under the 24-hour rule, with documents.

THE PRESIDENT: What is your suggestion of what we can do?

MR. SPRECHER: There is the fact that the postponed examination of the affiant Struss had been scheduled tentatively for Thursday. Personally, I don't see how that examination should take very much time because, as I understand it, an affidavit which the Prosecution will offer will clarify many of the points which Dr. Berndt desires to have clarified in lieu of cross-examination.

I suggest that we go over until Thursday morning. The Defense has also noted that there is a legal holiday tomorrow so far as the Germans are concerned; and although the Administration had determined that the indigenous help working for the Prosecution would work tomorrow, I suppose so far as this case is concerned some different arrangements can be made.

THE PRESIDENT: We would not want to establish any precedent of observance of religious holidays as distinguished from legal holidays. As you know, Mr. Prosecutor, that does not obtain in our country. We do observe legal holidays because the help is entitled to it. We do not want to put it on that basis, but do you think, if we should not sit tomorrow, that you will be in a position then to go along and conclude without any

further interruption, as far as you now can see, the Prosecution's case in chief? Do you expect to be in a position to do that?

MR. SPRECHER: No, Mr. President. I am not quite certain about your question. Did you ask us whether we would be able to conclude, without further interruption, the Prosecution's case?

THE PRESIDENT: I mean, without further recesses.

MR. SPRECHER: No. We are certainly, unfortunately, not in a position to make that statement, due to the fact that we have witnesses who are beyond the jurisdiction of the Court, whom we are attempting to bring in here, number 1; and number 2, due to the fact that the recent scheduling of several more cases which have to have documents has interfered with the I.G. Farben priority which up to this time has worked pretty well.

THE PRESIDENT: Well, the Tribunal is very much concerned, and very seriously concerned, about not losing any more time than is necessary.

Let me throw the switch and talk to my associates.

MR. SPRECHER: Just one more point, Your Honors. If you could push the time forward until Thursday morning with respect to the legal memorandum and then decide that at your recess, then that would either make it plain that we would have to go over in case you refuse to admit those documents, or else it will give us some witnesses so that we could go on.

(The Tribunal conferred)

THE PRESIDENT: This development changes the situation with reference to the objections urged against the documents in Books 80 and 81. The Tribunal has decided that we will not have a session tomorrow, but we will relieve counsel for the Prosecution and the Defense alike of any obligation to furnish any brief with respect to the documents in Books 80 and 81. If you think you can offer something in an informal way, have it available for us by tomorrow morning, we shall be glad to consider it. If not, the Tribunal will, on its own responsibility, undertake to solve that problem to its satisfaction tomorrow, so that when we convene on Thursday morning we expect to rule on the documents in Books 80 and 81. That will give you both time to devote yourselves to the preparations necessary to go along with the case and save any unnecessary delay because of those briefs, in view of the

fact that you may have tomorrow for your office work. If you care to submit any suggestions and have them ready for us by 9:30 o'clock in the morning, we will consider it; otherwise, we will undertake to reach our own solution as to the admissibility of those documents.

Are there any further announcements before we recess?

MR. LINDSKOFF: There is a further question, if it please the Court. The prosecution referred to the affidavit which it did not identify, since it didn't have any NI number. With respect to that document, as we pointed out, we will get it to the Court and to the defense as soon as we possibly can. We would like to have permission, of course, to refer to that in any memoranda we furnish the Court tomorrow morning.

THE PRESIDENT: Very well. If, at the same time you furnish the Tribunal with advance copies of that exhibit, you furnish it to counsel for the defense, it will be satisfactory and we will consider them together, upon the assumption that you will desire to offer the document later.

MR. LINDSKOFF: Thank you, sir.

THE PRESIDENT: Mr. Sprecher, have you anything further to say with reference to anything before we recess?

MR. SPRICHER: On Thursday morning Mr. Dubois will make a statement to Your Honors concerning the status of the Prosecution's case as we see it, from the point of view of the number of further documents involved, the number of affiants who have not yet been called for cross-examination, the number of affiants with respect to whom interrogatories will have to be filed or else, in some cases, their cross-examination postponed until the defense case, and similar matters.

THE PRESIDENT: In that connection, in as much as much as the Tribunal has the announcement of counsel for the Prosecution, we shall expect to make transferring the examination or cross-examination of some of those witnesses to the Commissioner, so that that will go along at the same time.

fact that you may have tomorrow for your office work. If you care to submit any suggestions and have them ready for us by 9:30 o'clock in the morning, we will consider it; otherwise, we will undertake to reach our own solution as to the admissibility of those documents.

Are there any further announcements before we recess?

MR. LINSKOFF: There is a further question, if it please the Court. The prosecution referred to the affidavit which it did not identify, since it didn't have any NI number. With respect to that document, as we pointed out, we will get it to the Court and to the defense as soon as we possibly can. We would like to have permission, of course, to refer to that in any memoranda we furnish the Court tomorrow morning.

THE PRESIDENT: Very well. If, at the same time you furnish the Tribunal with advance copies of that exhibit, you furnish it to counsel for the defense, it will be satisfactory and we will consider them together, upon the assumption that you will desire to offer the document later.

MR. LINSKOFF: Thank you, sir.

THE PRESIDENT: Mr. Sprecher, have you anything further to say with reference to anything before we recess?

MR. SPRICHER: On Thursday morning Mr. Dubois will make a statement to Your Honors concerning the status of the Prosecution's case as we see it, from the point of view of the number of further documents involved, the number of affiants who have not yet been called for cross-examination, the number of affiants with respect to whom interrogatories will have to be filed or else, in some cases, their cross-examination postponed until the defense case, and similar matters.

THE PRESIDENT: In that connection, in as much as much as the Tribunal has the announcement of counsel for the Prosecution, we shall expect to make transferring the examination or cross-examination of some of these witnesses to the Commissioner, so that that will go along at the same time.

Has counsel for the Defense, Dr. Dix, something you wish to say?

DR. DIX: No, Sir.

MR. DUBOIS: One other suggestion. If possible, if some members of the Defense could get together with us this afternoon or some time tomorrow, we might be able to make more satisfactory and concrete announcement with respect to witnesses. We can have a list ready tomorrow that we can both go over and decide to what extent all or part of the witnesses will need to be examined by the defense.

THE PRESIDENT: Dr. Gierlichs, will you see that Dr. Boettcher is advised of that request?

DR. GIERLICH: Yes, your Honor.

THE PRESIDENT: And one thing further, Dr. Gierlichs. May I say to you that there is a little administrative matter that I would like to see you about for a moment in my chambers when we recess, if I may.

DR. GIERLICH: Yes, your Honor.

THE PRESIDENT: The Tribunal will now rise until Thursday morning at 9:30.

(At 1555 hours, 18 November 1947, a recess was taken until 0930 hours, 20 November 1947.)

Official transcript of American Military Tribunal VI
in the matter of the United States of America against
Carl Krauch, et al, defendants, sitting at Nurnberg,
Germany on 20 November 1947, 0930-1630, The Honorable
Curtis G. Shreve presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.
Military Tribunal VI is now in session. God save the United States of
America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: The Marshal may report as to the defendants.

THE MARSHAL: May it please Your Honor, all the defendants are
present in court.

THE PRESIDENT: Any preliminary observations from the Prosecution?

MR. DUBOIS: I have a few comments to make concerning the status
of the Prosecution's case-in-chief, with a few suggestions. The
Prosecution's case-in-chief will consist of approximately 260 more
documents, so far as the documentation side is concerned. All of
these documents should be delivered to Defense and to the Tribunal, we
hope, by the end of this week, and we believe all of them should be
presented in evidence no later than the end of the trial day on
Wednesday of next week.

Now, as to affidavits, we have prepared a list of affidavits, which
has been distributed, which gives a list of affidavits or interrogations
which have been admitted in evidence, and on which it is planned to
offer in evidence by the time we close our case-in-chief, excluding,
of course, the affidavits which we normally exclude, such as the
affidavits of defendants and those which will have to be cross-examined
and those with respect to which cross-examination has been waived.

Yesterday we discussed this list with the Defense. The results,
I might say, are not too encouraging, from the standpoint of the
length of the trial--or I might say at this point that I think there
are about a dozen affidavits which the Defense have not yet had a
chance to examine. Now, the results of this discussion were the
following. The Defense confirmed that Werner Mansfeld (M-a-n-s-f-e-l-d)

has been waived as far as cross-examination is concerned. The affidavits with respect to the following three affiants the Defense and Prosecution will attempt to stipulate with respect to them because they relate solely to records. They are Willi Dagne, Kurt Hruptman, and the affidavit signed by Otto Hauck and Adolf Hoehlf. The Defense are preparing interrogatories on Welter Jacobi.

Now, as to the rest, there has been no indication that any of them have either been waived or that they can be handled by interrogatories, or otherwise.

Now, with respect to these, the remaining 46, the Prosecution has certain comments and suggestions. In the first place there are about four who have given affidavits which we feel could be disposed of by stipulation. We think maybe after the Defense has examined them they will feel the same way. They relate primarily to records and such technical matters that we do not believe that oral examination would be at all helpful. They are Karl Amend, who has merely given a statement concerning the products of a certain concern; Frank Fehle, whose affidavits relate primarily to excerpts from records; Iri Marek (M-a-r-e-k), who is testifying from records; and Alfred Zoun (Z-a-u-n), whose affidavits are based on records.

Now, as to the remaining, about, 40 affiants, the Prosecution has requested that all of them be brought here--and when they will get here we don't know. One example of the difficulties we are up against: We had Mr. Orlik here on Tuesday, which related to the matter, and he came in from Czechoslovakia on Tuesday and had to go back yesterday for personal reasons.

We are doing the best we can. On the whole, we believe that the Prosecution has already performed an unprecedented task in this trial in bringing witnesses here, particularly many who are beyond the jurisdiction of the court and beyond, obviously, our control in any way. We feel that some effort should be made by the Defense to try, at least initially, to get at the facts through the use of interrogatories,

and we propose the following procedure with respect to a number of these witnesses.

We recommend the use of interrogatories under the supervision of the Commission, under the following conditions. The Defense first submits interrogatories and the Prosecution, if desired, will submit cross-interrogatories, under the supervision of the Commission.

Secondly, if either side does not believe that all the facts have been brought out after this procedure, they can then appeal to the Tribunal, and if the Tribunal then feels that the witness should appear, the Tribunal can request the Secretary General to attempt to produce the witness at some time during the course of the trial, which in most cases would be after the close of the Prosecution's case-in-chief. The Prosecution will of course cooperate in every way possible to produce the witness. And of course if, after all that, the witness is not produced, the Court can then decide what shall be done with his affidavit or interrogation.

Now, an example of the type of case in which we feel this procedure could be used are the following: Rene Balandier, who we have been trying to get for sometime from France; Arthur Dietzsch, who is in the Landsberg jail could be brought here, I suppose, but under difficulties and special guard arrangements, and the like. We are talking now about only the attempt at interrogatories initially. Waldemar Hoven (H-o-v-e-n), also in the Landsberg jail; Josef Johan (J-o-h-a-n) who is an Austrian whom we have been trying to get for several weeks. He is traveling around and has not been in Vienna, and is not expected back until December. Otto Gangyel (G-a-n-g-y-e-l), in the United States; Johanna Marx, who probably could be produced but whose affidavit is so simple that we think interrogatories could well suffice. The same is true of the next, Elizabeth Michalke, (M-i-c-h-a-l-k-e), who is in Belgium, whom we have been trying to get for about a month and who has been having difficulties for the past month. Herbert Rosenberg, who is sick. Albert Speer; and the last witness, John Pehle, who

is in the United States.

Our program this morning will be announced by Mr. Sprecher--

THE PRESIDENT: Before that is done, the Tribunal is naturally very much concerned about the matter of the cross-examination, the waiver of the cross-examination, or cross-examination by interrogatories as to these outstanding Prosecution witnesses. We will very much appreciate any cooperation between counsel that will help solve that problem.

That is probably a good time for us to say that after you have exhausted the possibilities along that line the Tribunal has in mind using the facilities of its Commissioner to wind up those matters that cannot otherwise be reconciled. We do not intend to allow this case to drag unduly because of matters of this character. We had hoped this morning to make a reference of some of these witnesses to the Commissioner for cross-examination, but in view of the fact that you are now negotiating along that line, we will postpone for the time being the making of any such order until we have a report as to your progress.

The Tribunal has under advisement an objection that was urged against the documents contained in the Prosecution's Books 80 and 81. Before the Tribunal rules on that matter, we should like to inquire of the Prosecution if they stand on the representation that was made at the last session of this Tribunal, that they would, as soon as it could be distributed, offer in evidence the affidavit of Guenther Falkenhahn.

MR. HINSKOFF: Yes, Your Honor.

THE PRESIDENT: Are you ready at this time to have that document marked for identification with an exhibit number?

MR. HINSKOFF: Yes, Your Honor.

THE PRESIDENT: Will you do that?

MR. HINSKOFF: Prosecution offers for identification NI-12010 as Prosecution Exhibit for identification 1556.

20 November 47-4-BA-1-5-Schweb (von Schon)
Court 6 - Case 6

THE PRESIDENT: Will you indicate to us now to which book you
would like to have this document allocated?

MR. MINSKOFF: It is Book 80.

THE PRESIDENT: The situation with which the Tribunal was confronted by the objection has been very materially altered by the consideration of this document which we understand was passed to counsel for the Defense at the same time it was made available to us yesterday. In the absence of this document the Tribunal would have had a much more serious problem with respect to the admissibility of the documents contained in Books 80 and 81, and it may also be observed that the situation of counsel for the Defense who made the objection must be considered as on the state of the record at the time the objection was made. We have quite thoroughly gone over individually all of the documents contained in Books 80 and 81, and in that connection have considered also the document now marked for identification.

Without expressing any opinion whatever as to the weight of any of that evidence, and reserving also that it may be that some of the documents contained in those books are of such slight probative value as to not merit much consideration by the Tribunal, it is our conclusion that considering all the documents together -- and particularly in the light of the document now marked for identification -- that we cannot say that this evidence is immaterial. As I have said before, that is very largely concluded from the inclusion now of the document last marked.

The objections to the introduction of the documents contained in Books 80 and 81 are now over-ruled by the Tribunal.

For the information of counsel for the Prosecution, we may say that we think that our consideration of this matter in going over these documents one by one has served the purpose of any further explanation with reference to those documents. We have a clearer conception of what is contained in

those documents than we do have when they are presented in the regular routine of trial procedure. And under those circumstances the documents marked for identification in Books 80 and 81 will now be considered in evidence by the Tribunal without further explanation on the part of the Prosecution.

Now, you may pardon me one moment. Does counsel for the Defense have any preliminary matters to call to the attention of the Tribunal at this time?

DR. BOETTCHER: Mr. President, on the subject which was discussed previously, the cross-examination of affiants, I should like to make a statement this afternoon or tomorrow morning, after consulting with my colleagues and the Prosecution.

THE PRESIDENT: Very well; that will be agreeable to the Tribunal.

Now, has the Prosecution anything to state to the Tribunal and counsel in the case with reference to the program immediately ahead of us?

MR. SPRECHER: Mr. President, may I have just one minute, in view of what you just said about the comments of Books 80 and 81? We have a little last-minute adjustment.

THE PRESIDENT: Very well.

MR. SPRECHER: Mr. President, we first have a few corrections in the record which will be made by Mr. Van Street and by me; and then there will come the witness Colonel Tilley. Thereafter, I will present the remaining documents in Book 64, the Russian Complex with respect to Spoliation; and then I shall present the very few documents in Book 66 concerning positions held by the defendants....

THE PRESIDENT: Pardon me -- have you made any effort to reconcile the matter of the positions held by the defendants with counsel for the Defense? Have you gone over that

with them?

MR. SPRECHER: Mr. President, the certificates appearing on Books 11 and 66 constitute a rather considerable amount of the documents in those two books. Those certificates, as I think I explained in presenting Book 11, were obtained by the Prosecution submitting a list of positions more or less in the order in which they are found in Appendix A, under the name of each individual defendant, to Defense counsel. Defense counsel then checked those positions with his client, and where his client would agree, Defense counsel then returned that certificate. In some cases the defendant himself made an affidavit accomplishing the same matter; in other words, those certificates or affidavits by either the defendants or Defense counsel on behalf of their defendants were checked by the defendants themselves.

THE PRESIDENT: The point I am raising is: It does appear to the Tribunal that very much time ought not to be consumed in the presentation of material of that kind. If there are any errors or inaccuracies in those compilations they ought to be reconciled with counsel for the Defense so that the matter of introducing these documents can be purely a perfunctory function.

MR. SPRECHER: It won't take five minutes, in my opinion, Mr. President. But since you raised the other question, I can say that there is an area of conflict that we will have to take care of by way of other additional documents or by cross-examination, etc.

THE PRESIDENT: Very well.

MR. SPRECHER: After Book 66, Dr. Struss will be recalled for the final cross-examination or for stipulation which may be read on the record concerning some fifteen affidavits which are still outstanding.

THE PRESIDENT: Now, if any stipulation can be worked
4022

out along that line, will you have some member of your staff try to reach it so that we will not be delayed by any unnecessary cross-examination of that witness?

MR. SPRECHER: Dr. Berndt and Mr. Amchan have been working for sometime, but I have not been informed as of this morning as to whether or not there finally was a stipulation; whether or not several Defense counsel would or would not agree to give the full power to Dr. Berndt; but there still was the possibility of a stipulation.

Then this afternoon I would like to present Book 91, concerning Count IV. That will constitute most of the direct proof which we shall institute under that particular heading as a separate part of the case. Of course, there are other parts of the case which have a great deal of reference to Count IV, and Count IV, in turn, has a great deal of reference to other parts of the case. But I should think that would not take me more than one half hour, Mr. President.

Thereafter, the witness Pohl will appear. I hear some remarks from Defense counsel. The Document Book was served more than twenty-four hours from this afternoon, and I have the receipt. It is referring to Book 91.

And if we get beyond that there are some prior announcements of witnesses --

THE PRESIDENT: Very well. Now make your corrections on the record.

MR. VAN STREET: May it please Your Honors--

THE PRESIDENT: Pardon me just a moment. Mr. Marshal, in the meantime you may contact the witness Tilley and have him available so we will not be delayed, and explain to him the facilities here with reference to the sound system.

THE MARSHAL: It has been done already, sir.

THE PRESIDENT: Very well.

MR. SPRECHER: I am also asked by Mr. Dubois and Mr.

Minskoff to announce that we may get into the presentation of Books 82 and 83 this afternoon, and those will be presented by Mr. Minskoff.

THE PRESIDENT: That will come after the witness Pohl?

MR. SPRECHER: Well, we might; in case the witness Pohl can't get finished this afternoon and it is quite late before we start we might put those documents on instead of calling the witness Pohl.

THE PRESIDENT: Very well. Now, make your corrections on the record, gentlemen.

MR. VAN STREET: May it please Your Honors, reference is now being made to Book 88, and distribution of the documents concerned are now being made to the Court, and I think distribution has already been made to Defense counsel.

(Van Street)

With Your Honors' permission, I should like now to withdraw certain documents which will be hereinafter specified, and which are contained in Book 68, and replace the withdrawn documents with new documents. This comes about as a result of an objection raised by the Defense that the documents initially put into evidence were not copies of original documents, and could not be considered as copies of captured documents.

The pertinent pages of the transcript are 3214 through the middle of page 3221.

I should now like at this time to withdraw Document NI 3761, Exhibit 1314, which is found in Book 68, page 11 of the English, and 13 of the German, and to introduce in place thereof, Document No. NI 3761 (a), as Prosecution's Exhibit 1557. NI 3761(a) which is now being introduced, is an original TMA chart. The original itself is being put into evidence, whereas photostatic copies of the original have been distributed for insertion in the document books.

It is respectfully suggested that the new document, NI 3761(a), Exhibit 1557, be placed immediately after the withdrawn document, NI 3761, Exhibit 1314 in the Document Book, and that the same procedure be followed in respect to the documents hereinafter immediately introduced, as replacements of the withdrawn document.

The Glossary, if Your Honors please, in the English book at page 11(a), applies equally to NI 3761(a), and it is respectfully requested that the heading entitled, "Glossary of the Terms Used in Document NI 3761" be changed to read, "Glossary of the Terms Used in Document NI 3761(a)".

I should now like to withdraw NI 11411, Exhibit 1315, which is at page 12 of the English, and 14 of the German, and introduce in lieu of this document, NI 11411(n) as Prosecution's Exhibit 1558.

This is simply an extraction in table form of the figures shown in Document NI 3761(a), with the Court's permission, I now withdraw Document NI 3762, Exhibit 1316, which is found at page 15 of the English,

and 16 of the German, and introduce in evidence in lieu thereof NI 3762(a), as Prosecution's Exhibit 1559.

This again is an original document and consists of TLA charts dated 1 October 1944, showing the status by classification, that is prisoners-of-war, foreigners, concentration camp inmates, etc., of the workers in the largest Farben plants or combines, and 2, a chart dated 1 August 1944, showing the same type of breakdown.

The Glossary which appears on page 16 of the English book applies to the new document, and the heading, with the Court's permission, may be changed from, "Glossary of the Terms Used in Document NI 3762, to "Glossary of the Terms Used in Document NI 3762(a).

Now finally, with the Court's permission, I should like to withdraw Document NI 11412, Exhibit 1317, and introduce into evidence in lieu thereof, Document NO NI 11412(a) as Prosecution's Exhibit 1560. This simply consists of extractions again, in table form, of the figures shown in the preceding document, that is, NI 3762(a).

If Your Honors please, I should like to point out that the substitution of documents just covered has been discussed with Dr. Helmut Dix of Defense counsel, who was the counsel principally concerned with this matter.

The Prosecution is very glad to be able to clear up, beyond any doubt, the authenticity of the figures contained in these charts.

Thank you, very much.

THE PRESIDENT: Thank you. Has the Prosecution any further corrections to make?

MR. SPELCER: Mr. President, I have a few and I am sorry to take your time, but I don't think there is any other way which administratively can accomplish these matters satisfactorily, and I have made several inquiries in order to find out, and I just must ask your pardon.

We would like to show concerning the transcript, at page 2132, and concerning Prosecution's Exhibit 895, NI 4842, appearing in Book 48, page 110 of the English, page 165 of the German, that the Prosecution

agrees with Dr. Sachse that the signature appearing on that document should read Kusner, K-u-s-e-r.

At page 2067 of the transcript, referring to Prosecution's Exhibit 856, Document NI 7343, the record erroneously cites this document as NI 7543. I thought I should point that out now because it might make some difference. This document appears in Book 47, page 28 of the English, page 58 of the German. In that connection the Prosecution accepts the translation made by Defense counsel, Dr. Sachse, to the index of that document so that the index should read:

"The Reich Office for Economic Development," instead of "The Reich Military Economy Office".

Concerning the record at page 2099, that is the transcript 2099, English, the Prosecution has submitted a certificate to the Secretary General establishing the fact that the Prosecution's Exhibit 864, - that is NI 7797, appearing in Book 47, page 69 of the English, page 110 of the German, was found in the Field Economy Office at the "Feldwirtschaftsamt" which was the successor to the Military Economy Office, "Wehrwirtschaftsamt".

I do not think I have to point out that this arises because of certain Defense counsel having initiated the problem. In any event the record is now clear.

There are a number of documents concerning which some question was raised by Defense counsel in connection with the certificates, and I am now handing to the Secretary, a number of certificates concerning these documents, which I trust he can insert in the proper original exhibits, and it is, of course, available for scrutiny by whomever desires to see these certificates.

The first refers back to the transcript, page 2087, Prosecution's Exhibit 856, which is Document No 7343, in Book 47.

Need I state what the certificates states, further, Mr. President?

THE PRESIDENT: We are not concerned about the certificates; unless there is an objection to the document, let it speak for itself.

MR. SPEICHER: At the transcript page 2096, concerning Prosecution's Exhibit 861, NI No. 8649, Document Book 47, another certificate has been submitted.

Likewise, concerning the transcript page 2097, Prosecution's Exhibit 884, NI 7797, Book 47, and the last concerns the transcript at page 2101, Prosecution's Exhibit 557, NI No. 7850, also Book 47.

The Prosecution would also like to point out that concerning the transcript at page 2184, Prosecution's Exhibit 935, NI 1322, Book 49, page 128 English, page 175 German, that the Prosecution now offers to the Secretary General, a photostatic copy of the original document, and is substituting it for the photostatic copy previously offered.

Defense counsel pointed out that it was a bad photostatic copy. That is Prosecution's Exhibit 937.

The Prosecution also would like the record to show concerning the transcript, pages 2174 and 2175, with respect to Prosecution's Exhibit 937, that is NI 7626, Book 49, page 102 English, page 141 German, the Prosecution also offers a proper and legible photostatic copy, pursuant to request of Defense counsel.

After discussions with Defense counsel, Dr. Henze for Kugler, concerning objections by the Defense, the Prosecution wishes to state that concerning the transcript, page 1693, Prosecution's Exhibit 817, Book 45, page 128 English, page 183 German, that the exhibit, the letter in question in the exhibit, was signed by the defendant Kugler, and not the defendant Schnitzler, as counsel for the defendant Kugler previously indicated at page 1695 of the transcript.

Mr. President, I think we are almost current with such corrections, and therefore I burdened you with them. I only want to say this, that Mr. Wolffsohn is on sick leave, and if the Defense counsel have further corrections, they will see Mrs. Uiberall in my office.

MR. VAN STEEN: May it please Your Honors, one other matter has just come to my attention which needs straightening out, so far as the record is concerned, at this time.

Reference is made to 10029, Exhibit 47. This document was first put into evidence in Book 2, NI 9923, - that is 9923, - Exhibit 665, book 31. It is a Struss affidavit dated 22 August '47, in which Struss explains in narrative form his chart NI 10029, which has just been mentioned.

In addition to that, NI 11058, Exhibit 392, book 15, is likewise a Struss affidavit, dated 26 August 1947, in which Struss amends his chart NI 10029, particularly in respect to the responsibility of defendant Wurster.

NI 10029, Exhibit 47, was included in book 69 for reference purposes under the topical heading, "Farben's Involvement in the Slave Labor Program as shown at Individual Plants".

Now in order that the record may be absolutely clear I would like to state at this time that the distribution of NI 9923, Exhibit 665 and NI 10566, Exhibit 392, is being made to members of the Tribunal with a request that these exhibits be attached to and considered in connection with NI 10029 in Book 69.

THE PRESIDENT: The defense has heard the corrections on the record, suggested by the Prosecution. In the absence of objections now made, the corrections will be approved and ordered made.

There being no objections, it is so ordered.

Mr. Marshal, you may call the witness Tilley.

EDMUND TILLEY, a witness, took the stand and testified as follows:

BY THE PRESIDENT:

Will the witness remain standing and raise his right hand to be sworn?

I do solemnly swear that the testimony I am about to give in this proceeding shall be the truth, the whole truth and nothing but the truth. So Help Me God.

(Witness repeated the oath)

THE PRESIDENT: You may be seated. The witness is with the Prosecution.

Please give us the book and page reference to the document.

MR. MINSKOFF: May it please the Court, in Book 78, Document NI 10927, which is the last document in that book, was offered for identification, because of the fact that the document was not in the form of an affidavit but in the form of a statement.

THE PRESIDENT: It would very much facilitate the trial of this case if the information which is given us by the Prosecution of the books we need, is correct and comprehensive.

I personally called the office this morning to find the books we need, and now we find that we do not have the books that are now being used. Will the Secretary send to our offices and bring in our Book 78?

DIRECT EXAMINATION

EDMUND TILLEY

BY MR. MINSKOFF:

Q. What is your full name, Colonel Tilley?

A. Edmund Tilley.

Q. And where do you reside?

A. 17 Cleveland Square, London West 2; at present at Wiesbaden.

Q. I show you Prosecution's Exhibit for identification, 1523, and ask you to state whether the declaration contained therein is the full truth, to the best of your knowledge and belief.

A. Yes, according to the best of my belief and knowledge, it is the full truth.

MR. MINSKOFF: May it please the Court, may we offer in evidence at this time, Prosecution's Exhibit for identification 1523?

THE PRESIDENT: The document marked 1523 for identification, is now admitted in evidence.

MR. MINSKOFF: Are there any corrections or additions you wish to make to that document?

ATTORNEY: No.

The witness is with the defense, Your Honor.

THE PRESIDENT: The defense may cross-examine.

CROSS EXAMINATION

EDMUND MILLEY

BY DR. GIERLICH, counsel for defendant Geheimrat Schmitz:

Q. Colonel, in your statement you say that "there is a private and secret contract which Hermann Schmitz finally indicated to us." Since the German translation makes a misunderstanding possible, I should like to ask you, is it true that before you went to Heidelberg, Geheimrat Schmitz had not only told you of the existence of this contract, but that he had even told you where it could be found?

A. Yes, but not immediately.

Q. In any case, before you went to Heidelberg?

A. Yes.

Q. Thank you. Then, Colonel, you say that you found hundreds of letters, and congratulatory notes addressed to Hermann Schmitz from various leading Nazi personalities. Is it not true that these hundreds of congratulatory notes came from all of German industry and public life, including, of course, some from leading personalities of the Ministries and Party Organizations?

A. That may be so. I did not recognize all of the names.

Q. Witness, for just a second I should like to come back to my previous question.

- You speak of "a private and secret contract". Were there any outward indications or anything at all that characterized it as a "secret" contract, or was it not rather a normal agreement such as is often reached between companies and its functionaries?

A. So far as I recall, I got the word "secret", or that it was not public. In that sense, I wish to use the word "secret" there. I received that word from Geheimrat Schmitz, as far as I recall.

Q. Colonel, I was only interested in clarifying this question because the word, "secret" has frequently been used in other contracts, in this trial. It is quite a different matter whether Geheimrat Schmitz wanted to have this contract kept confidential. In the next paragraph of your affidavit, witness, you say that the note from Hermann Schmitz revealed the donation of 500,000 RM to the Party for the Deutsches Museum. Is it possible that your memory deceived you on this point, witness, that it was not a donation to the Deutsches Museum, but that the document which you found was the carbon copy of a telegram sent from the Central Committee office of I. G. Farben in which Hitler was informed of a donation of 500,000 RM, which Farben had made to the German Reich in commemoration of the return of the German Sudetenland and the sum was to be used in distressed areas of the Sudetenland?

A. It was not a telegram that I saw, but it was a letter, - it was the copy of a letter. As far as I recall, it was signed by Herr Hermann Schmitz. I am not certain of the signature now. It was a letter, and as far as I recall, it was addressed to the Nazi Party, or some Committee of the Party, and the statement was made that the money was to go to a Museum; as far as I recall, it was the Deutsches Museum. It was not for the benefit of the population of the Sudetenland.

Q. Colonel, do you still maintain this statement, even if I point out to you that such a contribution as you mention here, is not recorded in the list of contributions which have been offered by the Prosecution here, and if I may also point out to you that the Secretary of Geheimrat Schmitz, who was present when all this happened, has made

an affidavit and has identified this document as I have just given it?

and this also agrees with the document which the Prosecution has offered in evidence?

Your Honors, this is Document NI 2795, Exhibit 1046 A. I still maintain the accuracy of my statement. I had at the time, three American witnesses present who likewise saw this document.

Colonel, you also mention a letter in which I. G. Farben was notified that a plot of land in or near Auschwitz was allocated to them for the erection of a new plant, and you go on to state that apparently I. G. Farben was requested to pay only a nominal sum of money for the plot of land. May I ask you to tell the Tribunal what gave you the impression that only a nominal sum of money was paid?

A. That is my imperfect recollection. That is why I did not express it more definitely, because I am not so certain of that fact.

Q. Thank you.

Q. May I point out to you in this connection that a Document offered in evidence by the Prosecution shows that the purchase of the land upon which the I.G. Plant Auschwitz was to be erected was carried out by a man named Schaefer in Breslau, an Estate Agent, who carried on the negotiations himself. Do you believe that under the circumstances your impression might be mistaken?

A. As far as I recall there was not one transfer of all the property all at one time, but at separate times. I may be wrong in my recollection.

Q. Thank you. Then, Colonel, you speak of the collection of photographs of the Auschwitz plant of I.G. Farben which were given to my client on his 25th Jubilee in 1944 by the plant. First, you describe the circumstances under which you found this document and then you say that the two secretaries of Geheimrat Schmitz were quite excited and tearfully gave you the document, saying that they were so ashamed of it. May I ask you what you mean by "it"? It's in quotation marks. That's why I want to clarify this question.

A. The word "it" refers to this document.

Q. I should like to put something to you, Colonel; the Secretary of Geheimrat Schmitz, Fraulein Ester, in an affidavit which I have in my possession said the following: That this album after it was given to Geheimrat Schmitz was put by him on a table in his office in Heidelberg and that it lay on this table when Mr. Schmitz left Heidelberg in March and that it lay there when the American troops occupied Heidelberg and that it remained there for several weeks.

MR. SPRECHER: Mr. President, need we go further with this question?

DR. GIERLICH: May I make a brief explanation, Mr. President?

THE PRESIDENT: Very well.

DR. GIERLICH: Your Honor, I can see the purpose of this affidavit which we have here only in that the Prosecution wants to prove that this document was of such a nature that one can draw some conclusions from it to the disadvantage of my client and one of the reasons is seen in the fact that the Secretary of my client was ashamed of this book. I believe if the Prosecution deems it important to record this fact I must be given an opportunity to clarify a possible misunderstanding in this connection.

THE PRESIDENT: No further discussion on this simple matter is necessary. You may cross-examine this witness thoroughly as to the contents of his statement, but you may not in that connection inject into the enquiry evidence or statements of what the evidence will be, as to what your witnesses will say about the transaction. The difficulty, counsel, with your question is, that you are not asking about anything in evidence. On the contrary, you are indicating what your defense will be and what your showing will amount to at the proper time.

DR. GIERLICH: Mr. President, I can understand that perfectly. If this were a question of fact, then it would be a simple matter but here we have one of those customary difficulties when impressions of opinions are given. It's almost impossible to put anything to the witness if one is not allowed to express one's own ideas.

THE PRESIDENT: You may ask him, without undertaking to tell you how to conduct your cross-examination -- you may ask him if you wish, if he knew any assumption of fact that you wish to embrace in your question. The objection is sound in so far as you are trying now to get before the Tribunal the contents of an affidavit of the defendant's secretary. That will properly come in your own presentation. But you have a

very broad field of enquiry as to any matter that you can deduct from this witness that will throw any light on this document. The objection is sustained.

BY DR. GIERLICH:

Q. Colonel, I should like to ask you as follows: do you consider it possible that the excitement and the expression of shame of the two ladies which you mentioned, referred to the incidents in the Concentration Camp Auschwitz which at that time were being intensely dealt with on the radio and the press, but did not refer to the contents of this photograph album?

A. I am particularly certain of the fact here because I didn't know about Auschwitz and what went on there until one of the first conversations I had with Mr. Haefliger at Frankfort. During this conversation ----

THE PRESIDENT: Now, Mr. Witness, you are injecting a collateral matter in here that will just prolong this cross examination beyond any useful purpose. If you do clearly recall the question propounded to you by counsel, please try to answer it and it ought to be very simple and directly answered.

THE WITNESS: I remember it very correctly.

THE PRESIDENT: Very well, just answer it.

DR. GIERLICH: Mr. Witness,---

THE PRESIDENT: Just a moment, permit the witness to answer the question if he has an answer to make. If he doesn't inject into the answer a collateral issue.

DR. GIERLICH: I am sorry, Mr. President. I thought the witness had finished his answer.

THE PRESIDENT: Very well, ask him another question. That's a better way of getting at it.

BY DR. GIERLICH:

Q. Mr. Tilley, do you remember the dedication of this photograph album which was given as a present to Geheimrat Schmitz on the occasion of his jubilee?

A. Yes, sir.

Q. Can you tell us what it said?

A. I remember it was a jubilee. I believe it was the 25th Jubilee. I do not recall exactly what it was for. I believe it was his 25th Jubilee as a director. It may have been for some other reason. It was dedicated to Herr Hermann Schmitz being a director or the director or the managing director of Auschwitz. I do not recall the name.

Q. You do not remember the contents of the letter? You cannot tell us anything more about it?

A. Which letter?

Q. The letter with which this album was given to Geheimrat Schmitz. Perhaps I may refresh your memory, witness. Do you remember that this letter said that the purpose of this collection of photographs was to give Schmitz a general idea of the plant which was under construction, as he, himself, had never been in Auschwitz? Can you remember that?

A. I don't recall a letter with the book. I don't believe it was there.

Q. I thought you said before that you had read an accompanying letter with this.

A. I think it was a documentary note on the title page.

Q. In the book itself?

A. Yes in the book itself.

Q. You don't remember the accompanying letter?

A. No.

Q. Then I have another question, witness; you mention the fact that one picture, particularly the Jewish part of the population, was not drawn in a flattering way in that picture. Can you explain that a little more clearly?

A. There was a photograph in the center in each case. On page 1 a part of Auschwitz, as it said, had been selected, a narrow street. There were some people in the streets but not very easily distinguishable in the photograph. Surrounding the photograph there were drawings and these drawings exaggerated certain Hebraic features.

Q. May I ask you what the opposite picture was?

A. There was no opposite picture. There was no picture opposite that.

Q. Well, the next picture, then.

A. The next picture showed the planning, the designing of the plant and there was an office, a drawing office, as far as I recall and surrounding it the various people drawing sketches for the buildings.

Q. Witness, you said that there was a picture showing the breaking of ground and that concentration camp inmates and other workmen were digging up the grounds for the foundations.

A. What I wish to say by that ---

Q. I haven't finished the question yet. In this connection, witness, you say that in the sketches that is not in the photographs, prisoners are shown wearing Mohammedan fezzes. Do you consider it possible that the painter did not intend to draw a Mohammedan fez but a cap which is similar in form but lower and was the customary cap worn by workmen on construction work? A cap which is similar to the cap worn by concentration camp inmates?

A. I would recognize it only as a fez. Not all had the same cap. Only some, one or two or three had this fez but I would describe it as a fez, as I knot it.

Q. Yes, but, witness, you did not see this fez in the photographs but only in the drawings?

A. The fezzes, as far as I recall, only in the drawings, yes.

Q. Do you not believe, witness, that it isn't very likely that-- assuming the correctness of your deductions that there were actually Yugoslavian Mohammedans in the camp, the SS would permit these people from whom they took all their clothing and exchanged it for the camp clothing that they would permit them to keep their fezzes?

A. I don't know. I can only say that I recognized it as a fez or as fezzes.

DR. GIERLICH: Thank you. No further questions.

THE PRESIDENT: Any further cross examination of this witness?

(no response) Any re-direct examination?

MR. LINSKOFF: No redirect.

THE PRESIDENT: The witness is excused. The Marshal will escort him from the box. Are you ready to call your next witness?

MR. SPRECHER: We will present the documents on Russian spoliation.

THE PRESIDENT: Very well.

MR. SPRECHER: Mr. President, after I had introduced evidence with respect to Farben in Russia under Count II, which, of course, has cross references, so far as the proof is concerned, to Count I and Count V, even to some extent Count III because the very utilization of slave labor itself is a spoliation of a type and was related to the other types of spoliation. I had introduced previously in Book 63, Prosecution Exhibit 1169 through 1185 and then in Book 64 I had introduced Prosecution Exhibit 1186 through 1189 — your Honors made some reference to these but just so that the record can be clear at this time I thought I would refer to them.

THE PRESIDENT: All the documents in 63 are in evidence?

MR. SPRECHER: Yes, Your Honor, and the first four in Document Book 65. That is, down to the first page of 64, that is, Document Book 64 — down to the first page of the index were in evidence, and then we had arrived at NI-4962 which we had marked for identification as Prosecution Exhibit 1190 at the time the objection was made. Now, Prosecution Exhibit 1190, for identification, appears at page 12 of your Honor's Book and page 13 of the German. I want to say that there are only 12 more documents concerning this aspect of spoliations. There are among these 12 documents a few which we consider highly significant documents and if I may be permitted a short introductory statement showing the purpose I think I can save some descriptive remarks at the time when the documents are introduced. In our view one of the most

important aspects of some of these documents concern the elements of mens
re, the guilty mind, the criminal intent briefly described. I think
they help show that Farben was ready, willing and able to participate
significantly and substantially in the Nazi general plan of plunder.
They go into the Nazi planning concerning the whole "Ostraum", the East
Room, which was the most significant part of the Grosswirtschaftsraum or
the Greater Economic Living Space under Nazi ideology. They constitute
a ratification on their face of Nazi aggression. They constitute on
their face substantial assistance in the waging of war. They show
Farben using high position, high position held by Farben officials, in
order to deal with other persons of high position in very basic matters
of planning. They bring a number of additional defendants into the
spoliation complex so far as individual defendants taking aggressive and
active roles in planning acts of spoliation and if I may be permitted one
observation. One of our reasons for submitting them has been that we
think they make a mockery of any plea of mitigation or claim that Farben
acted under duress on this matter. With those remarks I would like to
come to Prosecution Exhibit 1190 and request that it go in evidence. May
I ask you to note the date of that document? It's 23 July 1941, one
month after the invasion of Russia and it comes from the Law Department,
NW-7, Ilgner's department, and it's sent to a number of the defendants
in the dock, Von Knieriem, von Schnitzler, Haeffliger, Ilgner and Mann.
The title concerns the "Chemie Ostland," a limited liability company
that was being proposed which was later called merely "Chemie Ost" and,
of course, in connection with the monopoly corporations which were being
formed to assist in the exploitation in the East, a number of corporations
have involved concern the residue. That is, they would take practically
everything that was left over. They were involved in some of the special
monopoly organizations, such as Buna Ost G. M. B. H. etc. You will note
that in the first paragraph reference is made to a discussion at the
Reich Ministry of Economics at which a draft of a certain proposed

regulation concerning the chemical industry, the exploitation of the chemical industry in the Soviet Russia was being discussed. Later on we will point out with some particularity some of the people who were present in addition to representatives from the legal department and if not present in this particular meeting, they were certainly present at the same time when the basic planning was going on. You will note that they discussed drafts of prior proposals with respect to how these monopoly corporations should be set up in connection with exploitations in the Soviet Union. Then we come to a very significant sentence which states that the proposals of the "Stickstoff Syndikat," that is the Nitrogen Syndicate which was headed by the defendant Oster, that the "Stickstoff Syndikat" proposal has partially made use of the Farben draft of 18 July 1941 and, of course, these had been discussed in the Reich Ministry of Economics in connection with the nitrogen plants in the Soviet Union. Now, the draft in its present version, according to this document, from Farben's Legal Department, was to be transmitted to Goering's staff and find a uniform application for all of the monopoly concerns in the entire field of chemistry.

Now, the next paragraph and I point this out because the timing and the sequence of decrees and preparation for those decrees is important, I think, to your Honors. It's pointed out that Reich Marshal Goering is to be authorized by way of decree to regulate the administration of the economy in the occupied Eastern territories and that on the basis of such decrees Goering will promulgate ordinances which prescribe the establishment of these various monopoly corporations for the field of chemistry and in that connection it's observed that the first paragraph of the draft in question is referring to that. And then you will notice that in a totalitarian state again -- and this is perhaps in any state -- certain attempts are being made to edge back and forth and get power, and here Farben was trying to work with the Reich Ministry of Economics in connection with these monopoly corporations to see that they did not have in their

corporation any provisions which would hinder them in dealing with some of the special commissars in the East who sometimes had different ideas than Farben and the Reich Minister of Economics. And the special references here is that the Charter should not, in itself, contain any additional obstacles in the context for the direction and control of the chemical plants which the Reich Commissioner and other state administration agencies were quite likely to demand for themselves.

Then you will note that Farben, according to the Legal Department, has the Minister of Economics on its side in this matter and that particular tasks will only be assigned after Farben had been asked. You will perhaps want to refer back to NI-4040, in Document Book 63. That's Prosecution Exhibit 1171 and that's the circular letter that Goering finally did make on 20 November 1941. You will note that Farben was making these plans concerning what Goering would issue in this decree in July 1941, four or five months previously.

If you go over to the next page and that's 14 of the English and 13 of the German, you will note complete identity between the plans -- between Farben and the Nazi authorities, so that it is finally said "our draft seems to meet all the prerequisites. All that's involved are questions of clarification."

There's a specific and different outstanding issue and if you will remember (?) the decision that happened earlier and recall that and Farben later had access to some of the policies which stated clearly the objectives which the Nazis had with reference to Russia and reduced it to a merely raw material and moving its population from one place to another and at the same time recall at this time, your Honor, the question of circulation and the transfer of these people for that purpose was obvious to anyone on the inside. I think the significance of this planning is of tremendous importance in this case.

THE PRESIDENT: The Tribunal will rise for its morning recess.

(A recess was taken.)

MARSHAL: The Tribunal is again in session.

MR. SPRECHER: The next document, NI-4961, may go in as Prosecution Exhibit 1561. This is a letter from the defendant Schnitzler, dated 8 August 1941, to Dr. Klaus Ungewitter, who your Honors will recall was the head both of the Economic Group Chemical Industry and the Supervisory Office Chemistry, the first being semi-official agency of the industrialists themselves in the chemical field, and the second being the Office of the Reichs Ministry of Economics. Schnitzler in this memorandum asked that he be appointed to the Verwaltungsrat of the Chemie-Ost, and he points out that as Deputy to the Verwaltungsrat of the Chemie-Ost, and he points out that as Deputy Chairman of the Economics Group Chemical Industry and as head of the Commercial Committee of Farben he feels he is deserving of this post. Without further comment I would like to note that the defendant Oster's recommendations concerning nitrogen are mentioned again and it shows, in our view, a rather close knowledge by the defendant Schnitzler concerning the plan.

THE PRESIDENT: Mr. Prosecution, when an objection was made and argued with respect to the preceding documents, we went over that matter pretty thoroughly and in that connection anticipated where we might find ourselves and went over these documents that you are now offering. I don't make this observation to deprive you of the right to point out anything that is particularly significant; but we do have, I think, pretty clearly in mind the content of all the documents in this book that have not been offered. We have discussed them pretty fully.

MR. SPRECHER: With the exception made so far, I think you will not feel too badly about my remarks. The next document, 4970, may be marked in as 1562. It merely indicates that Dr. Ungewitter saw to it that Schnitzler got the appointment he previously desired. The next document, NI-4964, may go in as Prosecution Exhibit 1563. You will note the time is before, still before the final decree of Goering, which I

mentioned before, concerning these matters and that the Economic Group Chemical Industry asked Farben to put the proper amount of money and to get the business managers lined up in order to run this monopoly corporation concerning chemistry. The next document, NI-6088, may be marked in as 1564. The document is again minutes of the Commercial Committee, from 4 November 1941, and we submit that it shows rather broad knowledge among these defendants and additionally you will note that KA, the Commercial Committee, states that "It is decided that Chemic-Ost shall be founded with the statutes on hand." There is mention made of a Liaison Office for all eastern questions which will be under the defendant Mann and the WIPO, part of Ilgen's NW 7, is to furnish certain assistance.

The next document, NI-2023, may go in as Prosecution Exhibit 1565, and with that we get into the famous Continental Oil Co. There are just two or three documents concerning this oil company, it was set up very shortly before the invasion of Russia for exploitation in occupied countries. It was used for such exploitation in Soviet Russia. You will hear this afternoon, in connection with Count 4, the defendant Buetafish had some substantial connections there too.

PP. FLAUCHSWER: (For Buetafish): Your Honors, I object to the submission of the Document NI-2023 and the subsequent documents NI-8153 and 10062 on behalf of my client. I doubt the relevancy of these documents for legal considerations. I should like to remark the following. The exploitation of petroleum sources in the Soviet Union is an exclusive State monopoly. According to Article 55 of the Hague Convention of Land Warfare, the occupying power can be considered as the usufractor of certain public lands which forests, etc, have to be administered according to those regulations. About the exploitation of certain mineral resources belonging to the state, the Hague Convention of Land Warfare does not contain any definite regulation. However, it is generally recognized that such mineral resources which were owned by the

state may be handled in an analogous way as provided the regulations contained in Article 55 of the Hague Convention. The measures which the Continental Oil A.G. took are by no means in excess of the administration of a usufructuary who is entitled to exploit the resources, within proper limits. Apart from that the exploitation of these resources was used only for the requirements of the fighting troops, and by no means did it cover those requirements.

DR. FLAEBCHNER: (continued) A further legal consideration of the relevancy of these documents is concerned here. Even if one were to assume with the Prosecution that we are here concerned with the forbidden use of economic forces and resources of an occupied country, the documents submitted can for the following reasons not prove any guilt of the defendants, and for that reason they are irrelevant. From the foundation report, NI-2021, it can be seen that the share capital of the Continental Oil, A.G. amounted to 80,000,000 Reichsmarks. From this amount Farben took over 3,000,000 Reichsmarks. Its participation in the Continental Oil, A.G. is exceeded by the participation of banks in this question to a considerable amount. The capital share of Farben in Continental Oil, A.G. did not even reach 1%. Farben could not exert any influence upon the business policies of Continental Oil, A.G., particularly as they were excluded from the business management. The fact that Farben participated only to 3.75% in the shares of the Continental Oil A. G. responsible for the actions of the business management, cannot make Farben. Even the fact that my client, next to twenty-five more gentlemen, was a member of the Aufsichtsrat of Continental Oil, A.G. could not cause anyone to assume that he or any of the other representatives of Farben should be held responsible for possible legal violation in the business management which we, however, do not admit.

I should furthermore like to point out that according to the statutes apart from the Aufsichtsrat there was a Verwaltungsrat which was authorized by statutes of the Continental Oil, A.G. with the function of supervision. Neither Dr. Beutefisch nor any other official member of Farben belonged to this Verwaltungsrat. These documents do not serve as evidence for the criminal responsibility of my client or the criminal responsibility of any other defendant. And, for that reason, the documents offered are obviously irrelevant and my objection is justified.

THE PRESIDENT: We will hear the Prosecution.

MR. SPRECHER: Mr. President, I would like to reply only very briefly

because I think this ground has been fairly well covered before and I shall indicate certain references which I think will enable us to be covered adequately for the present purpose. At the time the Hague Convention was drawn up, in 1906, there were no socialist states in existence such as a Soviet Union or some others which may approximate that, and the codification of decency that was referred to in that Hague Convention, referred to State owned matters such as museums, government buildings, and the customary kind of things which an occupying power might take over. Certainly because it didn't mention the normal resources which allow a country to maintain its own economic existence in spite of a belligerency where these resources are owned by the State could have no bearing. The Hague Convention would mean nothing in respect to spoliation where a socialist state was concerned. But I need go no further with this because the matter was discussed by the IMT where it was shown that spoliation was a crime and could take place in the Soviet Union regardless of whether or not the resources were State owned or whether they weren't State owned.

Now on the second point--the extent of capital participation and the extent of participation of these defendants are not co-extensive. Assume that these defendants had only 1% interest but by their participation ratified merely to that extent plunder. It would be enough. It is only a question of degree. It is not a question of whether or not they could have changed the course of the Nazi Government with respect to spoliation in Poland. We submit they had some substantial influence on how that pattern carried out but it is not a question of whether or not they could have changed it. It is not a question of whether or not they could have altered the plunder the Continental Oil planned or to some extent did. They marched along with whatever it did. We submit it is a question of weight, a question of materiality rather than a question of relevancy so far as the second point raised by Dr. Flaschner is concerned.

THE PRESIDENT: Now, Mr. Prosecutor, what fact or facts revealed by these three exhibits, to which counsel for the defense referred, do you claim is material to the issues in this case?

MR. SPRECHER: Well, in the first place the planning with respect to the dividing of the profits that would be gotten out of the exploitation, not only during the War, but later of the resources, the oil resources, of the Soviet Union. It tells how the net profits are to be divided. Now, Farben had an interest and the defendant Bueteifisch represented that interest. You will note that on the Aufsichtsrat of The Continental Oil Company, which was a corporation, there are a number of people found guilty as War criminals and a number of others who have been indicated as such, in connection with among other things such spoliation as is here involved. It is rather important what company is being kept in connection with these things.

THE PRESIDENT: In that connection is it your view, that even though this corporation was never consummated or never functioned as such, that the fact that Farben participated in the foundation of the corporation, owned some stock in it, and if it had been consummated would have derived some profit possibly, if it was profitable, and that the defendant Bueteifisch was a member of the governing board, binds these defendants who were occupants of positions that made them responsible for the policies of Farben?

MR. SPRECHER: Your Honor, we would but I want to point to one thing. This is no longer any talk about synthetic rubber where nothing was accomplished, but this is talking about oil, where plenty was accomplished. The Continental Oil Company, as some of these documents will show - and we can submit others, if necessary - was not merely a theory, but it was an active agency, and not only in occupied Russia—

THE PRESIDENT: I had reference to what is disclosed by three or five documents and not as to what was consummated. The reason for what I said was that they do not show a consummation operation of it.

MR. SPRECHER: I think, your Honor, they show that with respect to

"Ostland", and that refers not to Soviet Russia but to the group of countries, Latvia, Lithuania, and Estland, and in the Narwa District there was an exploitation of oil and the problem of transportation and the moving of this oil was discussed.

THE PRESIDENT: There is one further question and then you may conclude without interruption from me. You may recall that counsel for defense said there was another governing body of which Buetefisch was not a member which was only the responsible agency for the operation of this corporation. What is your view on that?

MR. SPRECHER: Yes, your Honor, it seems to me that he could have had complete nonentity during the actual managerial work with respect to Continental Oil but what was important, was policy determined by the State and, by this Aufsichtsrat which contains a list of some of the most important economic figures in Germany and if you run down that list as I had planned to do you will see that these men on the Verwaltungsrat were not much in a position to influence greatly the basic policy of what the Continental Oil should do inside the occupied countries themselves.

THE PRESIDENT: Your views in that respect are not altogether consistent with some of the views expressed by the Prosecution in other instances where they had the troublesome problem that controlling thing was that Farben had the majority of the stock or the fact that some of the defendants on trial were in positions where they dictated and determined policy.

MR. SPRECHER: Your Honor is 100% correct in so far as we have the same problem involved. But I stated by definition Farben's participation was in some influence question of weight, what is important is the question of ratification. We are not talking here about Farben being able to effect the Nazi Oil Policy in the East, we are talking about Farben being present on the scene not without some good representation and ratifying that whole line of policy. Now, may I point out that a quotation is made in Document NI-10162, - one of the documents to which

objection is made, - page 32 of the English, page 41 of the German. It states there "Dr. E. R. Fischer reported on the taking-over of the Russian mineral oil industry. See Appendix 3." And also on page 33, Mr. Dubois points out, that: "After the occupation of Estonia we immediately took the necessary measures to put the Estonian shale naptha production, which had suffered considerable damage during the war, back into operation." Then it talks about the business management. There is one thing I am not able to find at the moment, but where reference is made to the fact that Fischer came to a high conference as the representative of the I. G. Farben concerning a very basic matter, I will find that in a minute. Now, further on page 34, the sheer criminality of the organization is shown; under the heading "Taking over Russian Mineral Oil Industry," then it states that "When the campaign in the East started, the Continental Oil was charged with the execution of the operational measures necessary with regard to mineral oil," and mentions production, processing, transporting, sale - the whole score board.

MR. SPRECHER: (continued) Now, your Honor, again here the question to some extent may bear upon whether or not a particular individual defendant, as against the whole Farben Concern, had substantial enough connection here to make a considerable impression upon the Tribunal or not. We submit that it helps indicate the questions of intent, questions of planning, and these in a way which we think should be helpful to you in understanding the role of a number of defendants in any event in the matter of exploitation of resources which belligerent occupied territories needed to carry on even during War.

JUDGE MORRIS: Mr. Sprecher I am having a little difficulty myself with this. From the over-all proportion of your general position with reference to oil, in connection with Count I were you not attempting to prove that Farben had planned and participated in preparing Germany for aggressive war, you went into considerable detail to prove in this record of the development by Farben of synthetic gasoline and oil. The basis of your theory then was that was the product necessary to the successful operation of the Wehrmacht indispensable to the waging of war and put it in the class practically the same as armament. Now, that was in Germany. Now, we move over into Russia where there is evidence of seizure or at least planning of seizure of the oil industry of Russia which was a government monopoly and we now seem to be having presented to us the position that Russian oil is not armament, is something of a more private nature and that the exploitation of oil in Russia is not the seizure of something pertaining to armament but the exploitation of a product or a natural resource which is against the tenets of the Hague Convention. And I am just a little bit puzzled as to whether or not there is any difference in oil in Germany and oil in Russia when you consider the waging of war.

MR. DUBOIS: May it please the Tribunal. In the first place, I don't think that the question as to whether or not oil is an "armament" or "war material" for certain purposes is necessarily involved at all in Count I. We contended what Farben did there was indispen-

sible to waging of war. I think that is entirely a different question as to whether or not the exploitation here falls within the terms of the Hague Convention. Quite apart from the fact, I might also say, whether if you were to take anything where aggressive war is involved and whether or not you can even go as far as the Hague Convention. If you recall the IHT had to make certain comments on that. In other words, the position is: where an aggressive war is involved taking of anything is spoliation. We will certainly contend that in addition to the fact that this deal clearly violated the Hague Convention. But I say that the exploitation here falls within the Hague Convention is entirely a separate question, whether or not along with many other things Farben did to prepare Germany for aggressive war. Certainly, I would like to take this occasion to make other short brief comments. I don't think we have even contended that the major interest of a corporation established the responsibility for criminal purpose of that less than majority interest meant that there was no responsibility. I think in all these cases you have got to see the particular point, particularly for criminal purpose, just to what extent the defendants had control and to what extent they actually exercised that control or ratified it.

And, secondly, in some of these cases certainly this is an example I think the Tribunal will mark whether you can contend whether all the defendants are bound. In the first place, that is not the issue. In some cases we certainly do contend that all the defendants were bound and in other cases it may well be that only those particular defendants who participated were bound. In the Indictment we charged these defendants participated not only through the instrumentality of Farben but also otherwise which would include participation quite apart of their connection with Farben.

MR. SPECHER: Judge Morris, on your point there is just one other thing: assuming that is just the position you made were valid for all purposes. I think it raised an interesting question, indeed. The planning here was not merely with respect to Russian oil needed now

for Russian troops. It indicates that plans were made we conquer the inferior people, then we will divide up the spoils after we have already made plans or actually succeeded in dividing the spoliation in other countries. So there is no connection as to whether or not at that moment seizing an armament.

JUDGE HERBERT: Mr. Sprecher does this evidence anywhere establish any acts performed by the defendant Rustofisch in his capacity as a member of the Aufsichtsrat of this corporation.

MR. SPEECHER: No. It does not.

JUDGE HERBERT: Then let me ask you one more question.

MR. SPEECHER: Merely shows his presence, I should say, at the time when the general purpose of the corporation generally were be discussed?

JUDGE HERBERT: Now if it be assumed merely for the purpose of argument that the activities of Continental Oil did constitute a violation of the Hague Convention. In other words, we assume a violation in that regard, a question which perhaps in my view should be postponed to the final judgment, but assume that for the purpose of argument: is it the view of Prosecution that if individuals from a corporation with knowledge of the fact that that corporation is being formed for the purpose of engaging in criminal activities that the extent of stock ownership is immaterial, the extent of the stock control is immaterial even though there is no evidence showing subsequent acts by the specific individuals who formed the corporation.

MR. SPEECHER: Yes, that would be our position.

JUDGE HERBERT: That answers my question.

THE PRESIDENT: The defense may close the argument.

DR. FLASCHNER: May I draw your Honor's attention to the fact that the foundation of the Continental Oil Corporation took place a considerable amount of time before the War broke out between Germany and the Soviet Union. That can be seen from Document MI-2023. The meeting of the founders took place on 27 March 1941. In the report

of the foundation as it is available not the least indication is contained that it was undertaken in order to exploit anything in a future War with the Soviet Union.

Your Honors, may I also point out to you a further consideration, namely, that the Hague Convention does treat the usage of state property by the occupying power and that it does contain legal regulations about this. When I made my first objection, I already pointed out that the convention provides that state owned property which served commercial purpose of profit, for instance, estates, forests, and other state institutions, may be used by the occupying power for profit purges, that is, within the frame work of an orderly administration. In regard to the last argument of the Prosecution that these provisions of the Hague Convention would not apply to Germany in the case of Russia because Russia was attacked, and that, therefore all acts of the administrative authority were illegal, it seems to me, in view of the fact that because of violation of the Hague Convention against Russia leading politicians of the German Reich have already been sentenced by the IMT, that fact seems not understandable to me:

If the Hague Convention is used for an incriminating purpose, it must also be used in a favorable light.

THE PRESIDENT: Mr. Sprecher, will you please mark the two succeeding documents for identification, and we will pass this matter for the time being until after the noon-recess.

MR. SPRECHER: Yes, Mr. President.

The next document, NI-8453, may be marked as 1566 for identification, and the third document, NX-10162, may be marked as Prosecution Exhibit 1567 for identification.

THE PRESIDENT: Now you may pass on to the other documents in the book.

MR. SPRECHER: May we have just a second on a rather difficult translation, Your Honor?

THE PRESIDENT: Yes.

MR. SPRECHER: The next document is NI-6730 and may go in as Prosecution Exhibit 1568. We now get into another proposed monopoly corporation concerning soda and alkalies, and here, of course, the emphasis of activity by different defendants is somewhat different. Dr. Kuehne is mentioned in the document and also the defendant ter Meer, and copies were sent to the defendants Buerger, Ambros, Wurster and Haefliger. I will pass the document without further comment, except to note that over on the next page, - page 37 of the English, that is page 63 of the German -- Farben had the largest participation in that particular plan for that company.

Now the next document, NI-6729, is an affidavit of the defendant Ilgner which may go in as Prosecution Exhibit --

THE PRESIDENT: I am sorry, but did you not overlook a document?

MR. SPRECHER: Oh, yes.

THE PRESIDENT: This is not an affidavit.

MR. SPRECHER: Yes, Your Honor. I am sorry. I should have said that NI-6729 should go in as Prosecution Exhibit 1569, and the remark I have made previously showing Farben's participation actually was in the succeeding document; I beg your pardon.

The next document, NI-6348, is already in evidence as Prosecution Exhibit 1209. Your attention is only drawn in this connection to parts of paragraph 2 in which the defendant Ilgner points out that just after the war was started, a number of these defendants, defendants Oster, Buetefisch, Ambros and Schneider, were present at a time when in the Reich Ministry of Economics there were a series of discussions concerning these Eastern corporations. We have already pointed out this morning that Farben's legal department was involved. You will note that reports were made to the Vorstand concerning this whole planning through the monopoly corporations, and down at the bottom of the page reference is made to the defendant Mann's Russian Committee, and over on the next page to two different Farben committees which had to do with getting the proper facts and figures so that the job could be done with the usual efficiency. And there is only a last comment concerning the whole subject which is found in Ilgner's statement on page 39 of the English and page 65 of the German. Ilgner states that unless his memory is fallacious, I.G. Farben took the following attitude: "If the German chemical industry took part in the development of the chemical industry in occupied Russia, I.G. Farben stressed that it did not want to be sidetracked."

The next document, NI-10728, may go in as Prosecution Exhibit 1570. This is an affidavit of Krueger who has

appeared here before in which he discusses the general knowledge about what the Nazi program in Russia was so far as the booty theory or the booty approach to Russia was concerned. With what we conclude this presentation.

THE PRESIDENT: That, of course, is with the reservation that the Tribunal will rule later with respect to your documents marked for identification 1565, 1566 and 1567.

DR. VON KELIER (for the defendant Schnitzler):

Before the Document Books 63 and 64 which treated with Russia are completely closed, I should like to point one document out to the Tribunal. That is Document NI-440, Exhibit 1171; that is the third document in Book 63. That document contains a letter of the Plenipotentiary for the Four Year Plan, Economic Administrative Staff East of the 20th of November 1941. It also contains a memorandum about a meeting of the 18th of November, 1941. In the German edition it is stated that that is a translation. In the English document book there is no reference to any translation. Since that letter of the Four Year Plan was certainly held in the German language, the question arises as to why the German original was not submitted. May I point out that in the German document book on the last page of the document NI-440, the following two lines can be seen:

"I certify that the above translation has been done to the best of my ability and done correctly. Lawrence Ecker."

In the case of this document, then, it is not a copy or certified translation of an original but the document upon closer examination is found to be an undated, and uncertified translation, or to be more exact, it is a statement of a certain Mr. Lawrence Ecker; for that reason I should like to object to that document.

MR. SPRECHER: Dr. von Keller's remarks are directed to a difficult point, and it indeed runs to the weight of the document. One of the reasons for the affidavit which follows up the document in question is because we had observed this problem before, and I think the index and when taken beside the document of Schlotterer, the affidavit of Schlotterer, indicates that we have paid some attention to this problem before. The simple fact of the matter is that the original document after being translated by Mr. Ecker was lost, and it has not been found up until the present time, and we, therefore, submitted the translation of the English, of which we did have many copies, to Mr. Schlotterer who read it over and said that it made sense to him because he recalled the original.

THE PRESIDENT: In his affidavit does he say that he has knowledge of the original and that this is an English translation of an original document in the German language of which he had some personal knowledge, or that in effect or substance?

MR. SPRECHER: Yes, I think that is what he says in effect or substance, Your Honor.

THE PRESIDENT: Then this would perhaps constitute secondary evidence as to the contents of a lost document. Is that your theory upon which it was offered?

MR. SPRECHER: Yes, indeed.

THE PRESIDENT: And then the weight to be given to the document would be determined in part at least by the showing as to whether or not the evidence sufficiently establishes it as a lost document and sufficiently establishes the contents of the document. Well, with those observations in the record, it would not seem that there would be any basis

upon which the Tribunal should reject the document, but, of course, in the determination of the authenticity of the document as well as the question of whether or not it is a faithful translation of a lost document, the objections of Counsel for the Defense should be kept in mind and considered by the Tribunal.

Anything further, Dr. von Keller, that you have to say on that subject?

MR. SPRECHER: Mr. President, may I anticipate one problem? I think I probably answered a little too quickly to the first point you made. Will you look at page 31 -- that is page 26 of the German -- there in the last paragraph on the page, Dr. Schlotterer says: "I do not remember ever having read this document in German. The various points listed in it which I have now read in the English text correspond to what I remember." In other words, that document, the lost document as translated, taken together with Schlotterer's affirmation that the policy stated therein corresponds with what he remembers as the policy makes our point. He, Schlotterer, does not remember having seen the document itself.

THE PRESIDENT: We will listen to you for a moment, Dr. von Keller, and then we will recess.

DR. VON KELLER: I merely wanted to stress, Mr. President, that the affiant, Schlotterer, is in no position to certify the translation as is customary with the documents submitted here. First of all, he is not one of those persons who is employed by the Prosecution to certify exhibits, and secondly, he did not read the original document as he states himself, and therefore, he cannot compare the original document with the translation.

THE PRESIDENT: The Tribunal would be unconcerned as to whether the original document was in English or German. Presumably, of course, as a matter of common knowledge you would suspect that it was in German. However, the affidavit of Gustav Schlotterer would seem to meet the basic requirements of proving the existence and to some extent the contents of a lost or unavailable document. What he says about it is certainly pertinent to be considered in the significance that may be attached to the document. Prima facie the Tribunal is of the opinion that the showing made is sufficient to admit the document in evidence, it to be weighed, of course, in the light of the showing with respect to it and with the further reservation that the Defense will have an opportunity to show anything further that may throw a light upon the authenticity or the contents of the document.

The objection is overruled. The Tribunal will now rise until one-thirty.

(The Tribunal recessed until 1330 hours.)

AFTERNOON SESSION

THE MARSHAL: The Tribunal is again in session.

MR. SPEECHER: Mr. President --

THE PRESIDENT: If you desire to speak with reference to the matter that was under discussion this morning, I can say to you that the Tribunal is ready to rule, and perhaps we can save you the effort. With respect to the Prosecution's documents marked for identification 1565, 1566 and 1567, pertaining to the Continental Oil Corporation, the Tribunal thinks it sufficient to say that in the judgment of the INT -- and I am reading from page 133 of this official pamphlet edition -- the Court said this:

"As Minister of Economics and President of the Reichsbank, Funk participated in the economic exploitation of occupied territories. He was President of the Continental Oil Company, which was charged with the exploitation of the oil resources of occupied territories in the East."

In view of that statement of fact pertaining to one of the officials of the Continental Oil Company, the Tribunal is not in a position to say that this evidence might be competent for whatever weight should be attached to it with respect to any defendant who occupied an official position in the governing body of that corporation. We do not find it necessary to discuss the applicability of the evidence beyond that or to consider the weight that should be given to the testimony. The objections to the exhibits named are overruled, and they are in evidence, and that concludes the proof on Book 64.

MR. SPEECHER: Mr. President, the Prosecution then produces for the second time the affiant Struss. Your Honors will recall that there has been quite a number of arrangements made in between so that Counsel and one of the defendants could go to Frankfurt to work with Dr. Struss, and this cross examination now proceeds on that basis.

THE PRESIDENT: In that connection the Tribunal might observe that just since lunch the order appointing special assistants for the Defense to make an examination of the records at Frankfurt was signed

and deposited in the office of the Secretary General. We mention that because of the fact if it develops that some of your subjects of inquiry might be calculations or tabulations, you will have an opportunity to utilize that service in order to reconcile any controversies that may exist in that regard.

Dr. Berndt.

DR. BERNDT: Dr. Berndt for the defendant Dr. Ter Meer. Your Honors, may I ask you once more to look at Book II, 64, since I have an objection against Document WL-6730, which is Exhibit No. 1568 on page 36. Exhibit 1568 contains a letter of 13 September 1941, which is addressed by the Amorgann, one of the departments of Farben, to the sales combine chemicals, and it reports only that Farben agrees to a soda and caustic alkalies, East, G.m.b.H.

In the second paragraph it says that it will have to deal later principally with technical tasks. In the appendix of this document we can see the distribution of the corporation stock of 150,00 Reichsmark. Under No. 4 it is stated that the I.G. Farbenindustrie participated with 25,000 Reichsmark in this enterprise. No more is indicated. It is not stated whether any member of Farben participated in the business management of this enterprise, whether this G.m.b.H. had a "Verwaltungsrat" to which a member of Farben belonged. It is not stated whether this enterprise committed any wrong, participated in any wrong, and it is not stated either whether any member of Farben and especially any of these defendants here knew anything about such wrong. For these reasons I believe that the document Exhibit No. 1568 has no probative value, that it is irrelevant, and that as a result it may not be admitted into evidence.

THE PRESIDENT: If the Prosecution's case on this point depended upon this affidavit or this exhibit alone, Counsel's observations would certainly be pertinent and proper. However, we must, in order to ascertain the ultimate facts, consider all of the documents that

bear on the subject. It appears from the exhibit that copies of it went to certain defendants. It also purports to treat of a subject that is treated in the following document in evidence. It may be that as a matter of bringing knowledge to certain defendants or as a matter of fixing a date or some other circumstance that it does have some importance that may not be quite apparent on the face of it. The most harmless objection that can be raised as against a document is that it does not establish any fact but only burdens and encumbers the record. Without taking the time to analyze the document, considering it in connection with the other evidence that follows it in order in the document book, we think the Tribunal would be justified in overruling this objection, with the assurance that, unless in consideration of the other evidence it does have some bearing with respect to the guilt or innocence of the defendants, or at least one of them, it will not have any consideration from the Tribunal.

The objection is overruled.

MR. VAN STREET: May it please the Tribunal, affiant Struss is being called here this afternoon as a witness on the subject matter of sixteen affidavits which he has given. One of these affidavits is on Count 3, and the remaining ones are on Count 1. There has been an agreement between the Prosecution and Defense Counsel which it is hoped will be agreeable to the Tribunal, that Dr. Struss will be called on the affidavit in Count 3 first, and then at the termination of the very brief direct that he may be cross examined on that particular affidavit. At the termination of that all of the fifteen affidavits under Count 1 will be put in, and then the affiant will be cross-examined on those. Is that agreeable with the Tribunal?

THE PRESIDENT: You mean by that that he will be on the witness stand once but that the direct and cross examination as to the one affidavit shall be exhausted first and then take up the others?

MR. VAN STREET: Precisely.

THE PRESIDENT: Very well. There is no objection to that procedure.

MR. VAN STEENT: Reference is now made, if the Tribunal please, to NI-4999, Exhibit 1318, in Book 68. Now this is an affidavit by Ernst Struss dated 27 March 1947. It is found at page 22 of the English and 20 of the German. This affidavit, may it please the Tribunal, among other things must be considered in connection with the original TEM charts, which have been introduced and which are FI-3761-a, Exhibit 1557, and FI-3762-a, Exhibit 1559. The Prosecution now calls Dr. Ernst Struss to the witness stand.

THE PRESIDENT: Bring in the witness.

ERNST STRUSS, a witness, took the stand and testified as follows:

THE PRESIDENT: Witness, you may be seated. You may proceed, Mr. Prosecutor.

DIRECT EXAMINATION

BY MR. VAN STEENT:

Q. Dr. Struss, you will understand that you are under oath and that what you say will be so considered. Now will you kindly state your full name for the record?

A. Dr. Ernst August Struss, Frankfurt/Main, Gaertnerweg 59.

Q. Dr. Struss, I am now having handed to you a copy of the affidavit which you gave on 27 March 1947 and which is identified as NI-4999. I now ask you, did you give this affidavit under oath as the pure truth and nothing but the truth?

A. Yes.

Q Are there any corrections which you would like to make at this time?

A No.

Q The witness is with defense counsel.

THE PRESIDENT: The Defense may cross-examine. Counsel, will you please take care to confine your cross-examination to the affidavit now under consideration, with the understanding that subsequently you and your associates will be privileged to go into other fields.

DR. SILCHER (Defense counsel for defendant von Knieriem): Yes, Your Honor.

CROSS-EXAMINATION

BY DR. SILCHER:

Q Dr. Struss, in this affidavit which is under discussion now, you state that most of the workers in the last mentioned categories, that is the categories on the chart, were loaned foreign workers, prisoners of the army and inmates of concentration camps, most of them had been inmates from concentration camps you say, could that be seen from the chart?

A No, that could not be seen from the chart.

Q According to the chart, could the larger part for instance also have been loaned workers?

A Yes, certainly.

Q When did these charts appear in the TZA meetings and were they used there?

A At the beginning of 1942; before that that question was not acute.

Q Could you perhaps tell me a few more things about the purpose and the connection of these charts and for what they were used in these TZA meetings?

A These charts were to give TZA an opportunity to see approximately how the possibilities of expenditures of credit were given, for they

depended of course upon the type and number of workers available.

Q Did any difficulties arise in connection with the procurement of workers, was that the cause for these questions to be dealt with?

A Certainly, that was the cause why I had to show these drafts to the TEA meetings.

Q Was the situation such at the time that no further workers, no further German workers especially, were available?

A Yes, on the contrary the German workers were drafted away more and more into the battlefields.

Q Were the enterprises of Farben for the most part not so-called KL enterprises, vital and strategic enterprises?

A Yes, I believe that almost all the Farben enterprises were so-called KL enterprises.

Q In view of this labor situation that you were faced with, did it not result as a matter of necessity that you had to rely on foreign laborers and concentration camp inmates if you wanted to meet the orders which you had been given by the state and authorities?

A Yes, that is true.

Q Were these constructions and productions in which these workers were used, constructions which had been undertaken upon the orders of the authorities?

A Yes, there were no other orders to be applied.

Q Could a refusal to employ such workers not have meant that the orders of construction and production could not have been carried out, although the state urged that they be carried out?

A Yes, that is true.

Q Would such a refusal - that is an open refusal - not have been considered sabotage of the war effort?

A Yes, it would have, and I cannot remember that any such case arose in Germany.

Q Would such a refusal have at all been possible, or would it not have been true that if somebody had tried it he would have been

punished severely by the authorities and would have been forced to comply?

A He would certainly have been punished severely and forced to comply.

Q Dr. Struss, you say in the second paragraph of your affidavit that these charts were prominently displayed in the TEA office and every member could see them; in this connection, I want to ask you, were these the only charts on the wall, or were they merely a part of a large number of charts of various contents which hung on the wall of the TEA office?

A Yes, they were not the only ones. The walls were full of charts, ten to fifteen such charts were always hung upon the walls by me during these meetings.

Q Were they exhibited during the entire time or were they shown one after the other, or how was it handled?

A The TEA meeting was so arranged that it was introduced by a technical or scientific lecture. The gentleman who held this lecture needed charts for his discussion, and they were then hung over the charts of the TEA office and were only taken away when my lecture began.

Q Isn't it also true that charts which were not covered by the lecture charts were hidden or removed, so that they should not confuse anyone in the room?

A I handled matters in the following way: all charts that were visible were covered up so that only those charts would be visible which the gentleman needed to illustrate his scientific lecture.

Q On the question of the number of employees, could one see from these the details exactly, or were they only a general survey?

A The charts only offered a general survey; details could, of course, not be given in such a short and concise form.

Q Do you mean that the participants in the TEA meetings who were

not immediately interested in these affairs, whose departments were not immediately concerned, for instance, commercial men, not technical directors; would those persons ~~that~~ gained ~~in~~ insight into the workers conditions?

A They could not have gained an exact insight into conditions from these charts; they could see from the charts only whether the entire number of employees or workers mounted or declined, and they could only see whether the entire number of foreign workers or German workers rose or fell.

Q Do you then believe that without any full explanations on this point those people might not perhaps be ignorant of the fact that concentration camp inmates were included?

MR. SPEECHER: Just a moment, Mr. President, it seems to me that about the last four or five questions have been asking for conclusions considering what a normal man would take to be the case from the chart, that Your Honors are sitting in judgment on that question, and that this witness knows more than any other and is not particularly helpful in that connection.

DR. SILCHER: Mr. President, may I answer this very briefly? I do not believe that these are questions of judgment that could be left to anybody. The question here is how things were actually carried out in the TEA meetings. None of us know, but the witness does know where the charts were and how they were arranged, and he says they were displayed in prominent places.

THE PRESIDENT: The objection is overruled.

MR. SPEECHER: Mr. President, in that connection may I say that the grounds urged by the defense counsel is very well taken. I would like to have ~~question~~ him as to what happened rather than ask him for conclusions.

THE PRESIDENT: That would be better; I am not sure that he asks for conclusions, but try, counsel, to confine the questions to questions of fact rather than these conclusions. The objection is overruled.

BY DR. SILCHER:

Q Were these charts discussed singly in the meetings?

A No. —

Q Oh, excuse me, the last question had not yet been answered because of the objection. You may now answer the question whether such people might perhaps not realize that concentration camp inmates were employed?

A A man who was personally concerned might not know this, for the question of concentration camp inmates was decided only in the smaller form. It was not to be seen from the columns of the graphs, but only from the explanations that were handwritten. I am not sure whether these explanations could be read from all seats in the room.

Q The question I just asked you was whether the charts were discussed singly.

A No, these charts were never discussed. I can only remember what I stated in this affidavit, that on various occasions Dr. Gajewski as well as Dr. Amboos explained matters with the help of the charts and stated that their German workers were insufficient and that one could not manage with such small numbers of Germans. The charts were never discussed in detail.

Q At the Tea meetings, was it discussed that these foreign workers were forced workers?

A No, this question was never dealt with.

Q Was the question of using concentration camp inmates discussed in detail?

A I can remember no case except the first comprehensive lecture about Auschwitz.

Q Did conditions in these labor camps of the concentration camps ever play a part in these discussions?

A I cannot answer that question at all, for subsidiary camps of the concentration camps were not known to us at all in the Tea.

I don't know what you mean by that.

Q I mean camps such as, for instance, Monowitz, the so-called Camp IV near the Auschwitz camp. One has to differentiate, of course, the concentration camp as such, Main Camp Auschwitz, and a number of so-called subsidiary camps which may also be called labor camps, of which Monowitz is one.

A In my opinion that was never discussed in the Tea.

Q At what time during the Tea meetings was the development of the number workers discussed, when the charts were introduced?

A That was handled in the following way. After point one of the agenda, that was the technical or scientific lecture of the day, came my lecture about the credits, and in connection with credits I gave a short survey of the fluctuations in number of workers.

Q Under paragraph 6 of your affidavit you state that Herr von Knieriem participated regularly as a guest because of patents and because of technical matters and by reason of his position as the head of the I. G. Farben legal department. Would you perhaps explain that in detail? What do you mean by his position as head of the I. G. Farben legal department? Was there any connection?

A No, there was no special connection. I merely assume that Dr. ter Meer as the chairman of the Tea invited Herr von Knieriem in that capacity, although Herr von Knieriem was never consulted on legal questions in the Tea, since no legal questions were discussed there; and I cannot remember that Herr von Knieriem ever discussed legal questions in the Tea meeting.

Q Did Herr von Knieriem say anything at all at any time in the Tea meetings?

A I estimate that during the last six or seven years he spoke two to four times, but I cannot tell you exactly.

Q What type of questions did he deal with?

A I believe in 1943, I remember a new regulation of the patent law and the compensations to be given to inventors. It was in connection

with patent legislation, at any rate.

Q And in the other one to three cases that you remember that he spoke, did he also discuss patent and compensation questions?

A Yes.

Q Then he did not discuss any other legal questions in the Tea?

A No.

Q Then his participation in the Tea was expressed only in his special concern with patent and license questions, but not his other function as the first lawyer of Farben?

A Yes.

Q You mention his regular participation. Did he participate absolutely regularly, or only more or less regularly?

A I believe it was more or less regularly.

Q When Mr. von Knieriem was present, did he attend the entire session, or did he leave early?

A I remember that he frequently left after the first, more important part of the meeting.

Q Was that before one discussed the question of fluctuations in number of workers?

A That is possible, but I cannot say that with certainty.

Q Did you record the fact that he left early?

A No, I merely indicated that Herr von Knieriem was present, that is all.

Q If I understood you correctly then, if Mr. von Knieriem is listed as being present at the meeting, even if it is not stated that he was present temporarily, that does not preclude that he might have left early?

A That is true.

Q If other members of the Vorstand who were not more or less regular guests, besides Herr von Knieriem, did come as guests, did they also leave early?

A A It was generally desired that those gentlemen should hear only the introductory lecture, and after they had heard that lecture, they should in general leave the Tea meeting.

Q That is before the development of the fluctuations in labor was discussed?

A Yes.

Q Under paragraph 3 of your affidavit you speak of Dr. ter Meer's report in the Vorstand meeting about the Tea, and you say that you helped him to prepare the report, and in this way the Vorstand had the advantage of being informed on everything that was discussed by the Tea. Can you tell us anything about the extent of the reports that were made to the Vorstand?

A I can do that, because during the last weeks I read for the first time in my life a few reports of the Vorstand meetings. Dr. ter Meer's report was always very short, as I imagined that it would be — a very short extract from what had been said about the credit situation.

Q Then Dr. ter Meer's report was not by far so detailed as the discussion in the Tea meeting?

A Not at all. I believe that at the most Herr ter Meer spoke four or five minutes.

Q I assume that you can answer this question by reason of your collaboration in the preparation of the report. Was the question of the development of the number of workers, also brought to the attention of the Vorstand in that report?

A I believe that Dr. ter Meer never did that, because the main point was the appropriation of credit.

Q Were these charts on labor fluctuations suspended on the walls in the Vorstand meetings?

A No, that may have been an exception, but generally we took the charts down immediately after the Tea meeting was concluded.

Q Then, if I understood you correctly, and if I may perhaps summarize somewhat, your remark that the Vorstand was informed on everything that was discussed by the Tea is to be taken only with those limitations that you have just made?

A Certainly, Dr. ter Meer merely reported what he considered to be most important to the Vorstand. Since all Vorstand minutes are available, they can be used as evidence.

DR. SILCHER: I have no further questions.

MR. SPEECHER: Mr. President, I think you have seen some of the Vorstand minutes, because some of them have been laid before this Court, and they are obviously condensations of what took place. This witness was not present at the Vorstand meetings. We have hesitated to object to this long questioning about the matter. We think it was improper, and we move to have it stricken out.

THE PRESIDENT: That motion will be over-ruled. Any further cross examination of this witness on this subject?

DR. KRAUSS (counsel for the defendants Lautenschlaeger and Jaehne): Mr. President, I also refer to the affidavit NI-4999 and the two charts which are attached and which are the basis of this affidavit.

CROSS EXAMINATION

BY DR. KRAUSS:

Q Dr. Struss, in one of these charts, which you will certainly remember, one can see the consolidated group of loaned laborers, foreign workers, prisoner workers from the Army, and concentration camp inmates, in the column of almost every plant. Dr. Struss, is it true that in the case of a large majority of Farben plants, and especially in the case of the big western plants such as Ludwigshafen, Hoechst, and Leverkusen, no concentration camp inmates were used at all?

A Yes, that is true.

DR. KRAUSS: Thank you, Mr. President, I have no further questions.

CROSS EXAMINATION

DR. STRUSS

BY DR. DRISCHEL, counsel for the defendant Ambros:

Q. Dr. Struss, a short while ago you mentioned the meeting in the TEA in which, for the first time, comprehensive lectures were given about Auschwitz. Do you know when that meeting took place?

A. Yes, in November 1941.

Q. In November 1941?

A. Yes.

Q. Had that project never been discussed before in the TEA meetings?

A. Yes, it had, in May or April 1941, but only quite generally.

The detailed lecture of Dr. Bestofisch about the coal situation, and Dr. Ambros's lecture about the plant took place in November of 1941. One moment, I believe I can give you the exact day — no, I do not have the document with me.

Q. Witness, I think there was a translation mistake. Will you please tell us once more when this lecture was held?

A. November 1941.

Q. Isn't it true, Dr. Struss, that during a meeting of 19 March 1941, Auschwitz was also discussed in detail, and that at that time Dr. Ambros gave a comprehensive lecture about the choice of sites for this plant?

A. You certainly do not expect me to remember all of the dates of TEA and Vorstand meetings, do you? At any rate, I read the minutes of the Vorstand, and they contain only one short sentence. I believe it was April 1941.

Q. May I formulate my question a little differently. When did you learn — you, Dr. Struss — about the Auschwitz project?

A. I assume during this TEA meeting which to the best of my recollection, took place in April 1941. I have looked it up in my files. In January 1941 there was a meeting of the Commission "K", that is the

Technical Experts meeting, about artificial and rubber goods. However, in the very extensive program, which I still possess, I found not a single word concerning Auschwitz.

Q. If I have understood you correctly then, you assume that you too only learned of Auschwitz in about April 1941?

A. I assume so.

Q. Dr. Struss, in the lecture given by Dr. Ambros, did he not also refer to Goering's decree and the directives that Farben had been given for the employment of foreign workers, as an emergency measure?

A. Try as hard as I may, I cannot remember that.

Q. Dr. Struss, do you know what reasons were given in the TEA for the choice of the Auschwitz site?

A. Yes, I believe that I can remember that very well. The choice of a site for such a large plant is not simple. It requires an enormous flat territory; it requires a nearby river for an adequate water supply; it requires enormous amounts of coal; and in this case we also had to have calcium in the vicinity; and that, of course, made the choice of Auschwitz very difficult.

I know that Dr. Ambros and a staff of associate workers spent many months, and I believe one can even say a whole year, to find a suitable place.

Q. Dr. Struss, do you know that on 6 February 1941 a decisive meeting took place in the Reich Ministry of Economics for this very reason -- for the purpose of choosing a suitable site?

A. No, I do not know that. At least I do not remember it, and I do not think that I ever did know it.

Q. During the later discussions in the TEA, was the employment of concentration camp inmates ever prominently discussed, and was it ever stated that the reason for the choice of Auschwitz was the fact that concentration camp inmates were available there?

A. No.

Q. From your knowledge of the negotiations in the TEA meetings, you state that the choice of Auschwitz was determined only by technical considerations?

A. Of course, the procurement of labor -- which was very important, as we know -- also had to be taken into account.

Q. But it was not true -- or was it -- that the reason for the choice of Auschwitz was the vicinity of the concentration camp?

A. No.

Q. Dr. Struss, may I read to you from your affidavit, under paragraph 4? I quote: "As far as the use of concentration camp workers by I. G. Farben is concerned, I remember that this plan had existed for Auschwitz from the very beginning". And then you say further, and I quote: "The reasons were, first, the near location of coal mines; 2, the availability of labor from the concentration camps of Auschwitz". This description then is not correct, in the light of what you have just now stated?

A. Oh, I believe that it is correct. First of all, the first sentence, I suggest that we look at those two sentences separately.

Q. Dr. Struss, I do not want to put anything to you. I merely want to get enlightenment from you, and explanation, and I ask you, after you have just now told me that technical considerations were decisive for the choice of Auschwitz, that your affidavit should not be understood to mean that the near proximity of the concentration camp was decisively important for the choice of the site?

A. Now decisive, but it had some influence.

Q. Dr. Struss, do you know how the concentration camp inmates came to be used for Auschwitz?

A. No.

Q. Did the TEA meetings not always deal with the fact that these laborers had to be accepted as a matter of necessity, because there were not enough German workers available?

A. That was certainly discussed. If I remember correctly, Dr. Ambros realized from the very beginning that he could get only a very small percentage of German workers for Auschwitz. He wanted to use the indigenous Polish rural population in Auschwitz for his workers, and secondly, he wanted to use the inmates from the concentration camp Auschwitz.

MR. SPRECHER: Will you excuse me for interrupting? Mr. President, I would like to interrupt only because I have heard that a foreign witness has come who had been announced, and I thought I should give as much prior notice as possible. It is Rudolph Ehrlich, and we would like to change the schedule accordingly, because the affiants are very anxious to be cleared from Nurnberg, and, being beyond the jurisdiction of the Court, Mr. President, we are not exactly free to completely disregard their wishes.

THE PRESIDENT: What is your desire? To complete this phase of the cross-examination and then call the witness?

MR. SPRECHER: If we can complete the entire cross-examination this afternoon, fine. I just merely wanted to say that Rudolph Ehrlich would follow the witness Struss.

THE PRESIDENT: Very well.

DR. FLAEBCHNER: (For Bueteifisch) Mr. President, the witness Ehrlich is an affiant whose affidavit is in Document Book 81. Since the Tribunal overruled my objection to the submission of these documents, I am not in a position to cross-examine this witness Ehrlich.

My client is not informed about the conditions under which the workers were employed in the mines concerned, and cross-examination of this witness could not extend beyond the scope of generalities, and therefore I waive the cross-examination of the witness Ehrlich.

THE PRESIDENT: The Tribunal regrets that this is a matter over which it has no control and can appreciate also the situation that the Prosecution is under. Certainly the Defense would be in no worse situation than what usually prevails, if a witness that you had never heard of, whose

name you never heard is called to the witness stand and testifies, and then the Court tells you at the conclusion of the testimony in chief to proceed to cross-examine your witness.

If there is anything that the Prosecution can do to accommodate counsel for the Defense, to postpone this examination of the witness until tomorrow morning, it is agreeable to the Tribunal, but we cannot establish any precedent here of delaying the cross-examination under those circumstances.

What about it, Mr. Prosecutor? Can you let the witness go over untill morning?

MR. SPRECHER: Mr. President, the way the cross-examination of this witness is progressing, I do not think that it will offer a problem. I think we will be able to agree with Mr. Flaechner's wishes in this case.

DR. FLAECHEMER: I do not want any misunderstanding. I waive the cross-examination of this witness entirely because I cannot ask him any questions.

MR. SPRECHER: Mr. President, Document Book 81, in which this affidavit is found, has been before the Defense for some time. The Fuerstengrube Mine, which was supplied with Auschwitz Camp labor, was very close to the Auschwitz camp, and some of the documents indicate how other defendants than Dr. Bueteufisch were involved.

The mere waiver of this witness by Dr. Flaechner is not sufficient, at least for the Prosecution. Unless the whole defense were to waive we should want to produce this witness on our own initiative.

THE PRESIDENT: What is the attitude of the other defense counsel? Do all of you wish to waive the examination of this witness under the circumstances? I will put it the other way. Does anyone wish to cross examine the witness under the circumstances?

Now, there is no indication to the Tribunal that there is any desire on the part of any defendant, at least represented here by counsel at this time, that any cross examination of this witness is desired.

DR. GIERLICHES, (Counsel for Schmitz): Mr. President, the fact that this witness appears suddenly is a surprise for all defense counsel, and therefore I should like to point out that a number of gentlemen are not here, and cannot give their point of view. Perhaps we could postpone this matter until after the recess this afternoon, so that we could notify the persons who are not here that Dr. Ehrlich is to appear.

THE PRESIDENT: That is an entirely reasonable request, and we will re-ask after the afternoon recess to determine whether or not any cross examination is to be had.

Is there any further cross examination of this witness?

BY DR. DRISCHEL:

Q. Dr. Struss, may I ask you once more after this interruption, you were not present at this decisive meeting of February 1941, at the Reich Ministry of Economics?

A. No.

Q. Did you later learn, for instance from Dr. ter Meer, that during this meeting the technical problems of the choice of a site were discussed exclusively, and that no discussion and no mention was made of Auschwitz concentration camp at that time?

A. No. I did not learn anything about that at all.

Q. When did you learn that concentration camp inmates were used in the Auschwitz plant?

A. As I recall on the first day when I learned about Auschwitz. I assume that that was on the occasion of the TEA and Vorstand meeting in April 1941.

Q. Dr. Struss, may I put to you that a carbon copy of the minutes of the meeting of 6 February 1941, signed by Dr. ter Meer, about this meeting in the Reich Ministry of Economics was sent to you as well as to Director Dancker?

A. Then it slips my memory completely. I cannot remember these things, try as I may.

Q. You say that you learned about the employment of foreign laborers and concentration camp inmates for the first time in April. In this connection, did you also hear that by Goering's order, or by Himmler's order, these people had to be used to carry out the construction work?

A. I cannot remember that.

Q. Did you notice, that it was remarkable that a plant of such a size should be built with concentration camp labor, since you yourself said that Dr. Gajewski and Dr. Ambros repeatedly for German laborers?

A. Certainly I noticed that, and I personally did not understand very well why they should run this risk, but Dr. Ambros explained at the time that there was a large indigenous population of workers available which he might use for his workers, next to a small cadre of German workers, but beyond that, one might also expect certain support from the inmates of a new concentration camp.

Q. Then I understand you to say that these concentration camp inmates were intended only as a complement as an auxiliary force.

A. Certainly.

Q. Didn't you also learn in this connection, Dr. Struss, that the order for the employment of these people existed?

A. I cannot remember.

MR. VAN STREET: Your Honor, I think counsel is pressing this a little bit too far. The question was already asked once before, and after consideration, the witness said, "No", that he could not remember the Goering order, or the fact that it had been discussed. It is coming back again to the same thing. I think leading the witness is permissible but I think that this is leading him a little bit too far.

THE PRESIDENT: The other question was specifically about an order

of Goering. This is a general one, as to where it came from. If that is purely an order that might have emanated from some other sources it might be permissible. It should not go over the same territory twice.

DR. DRISCHEL: I thank you, Mr. President.

The witness has already said that he does not remember, and therefore, I do not wish to have the question answered any further.

Q. Dr. Struss, another statement is not quite comprehensible to me. On page 2 of the same affidavit, document VI 4999, you say, "The suggestion to build up the plant in Auschwitz was made by Ambros, who had discussed it previously with ter Meer. I can say that it was 90 per cent the responsibility of Ambros, and 10 per cent the idea of ter Meer."

I do not quite understand what you mean by that. Perhaps you can explain it.

A. Yes, this refers not solely to the choice of the site for Auschwitz, but to Buna No. 4. That is the plan, the possibility to create a fourth Buna factory. It might have been called Fuerstenberg or Raschwitz or Auschwitz. In the final analysis it turned out to be Auschwitz.

Q. What has that got to do with 90 per cent and 10 per cent?

A. I was asked if these gentlemen were responsible for the last Buna factory. I was asked what was the proportion that I estimated was the responsibility of Dr. Ambros, and that of Dr. ter Meer, and that is how I expressed it.

THE PRESIDENT: I don't think it would serve any good purpose to try to figure out to what percentage-extent -- two minds may have cooperated with respect to a certain project. I think that is getting into a field that is quite beyond our comprehension here. I don't think I would waste much time about that.

DR. DRISCHEL: Thank you very much. I merely wanted to have the witness explain his statement because I did not understand it.

Q. Dr. Struss, do you know that Buna 4 was erected by order of the

Reich?

A. Yes.

Q. It was not a plan that Farben created?

A. By no means.

DR. DRISCHEL: Thank you, I have no further questions.

CROSS EXAMINATION

DR. STRUSS

BY DR. THEOBALD (Counsel for defendant Buergin):

Q. Mr. Witness, I have some very brief questions on your affidavit, Exhibit 1318. Something has already been said about the distribution of workers on the chart attached to this affidavit, and then the column of loaned workers, foreign workers, army prisoner workers, and concentration camp inmates was discussed as consolidated into one group.

May I ask you, was this consolidation of these heterogeneous elements already furnished to you by the plants, or did you compile them in that manner for your TEA purposes?

A. No, this compilation is not my own invention, it was made by Bertrams' office in Leuna, and I took over Bertrams' compilation without any change.

Q. If I understand you correctly then, in the chart you used the figures as you got them from Bertrams' office.

A. That is correct.

Q. Then you cannot give me the reason why these various groups were consolidated into one column of the chart?

A. No, I certainly would not have done it that way, but I believe Dr. Bertrams' reason was that these groups at the beginning were so small that it would have been very difficult to subdivide them.

Q. Since you received these figures from Bertrams' office for the purpose of the TEA, did you then check them as to their accuracy, or was that not your task?

A. That was not my task by any means. I have to correct myself. Dr. Bertrams did indicate this group as one figure, but on a separate sheet he gave me a subdivision of that figure, so that I knew about it.

Q. From your knowledge of this subdivision of the so curiously consolidated groups, can you tell me whether Bitterfeld and Wolfen, which are mentioned in one column on the graph, ever had any concentration camp labor?

A. I can tell you from memory that neither of the plants ever used concentration camp labor, but the documents - these subdivisions of the documents were lost. I do not have them any more.

DR. DRISCHEL: Thank you very much, I have no further questions.

RECROSS EXAMINATION

DR. STRUSS

BY DR. GIERLICH:

Q. Excuse me, Mr. President, I have one more question. Dr. Struss, in your affidavit, NI 4999, you state that it was quite clear to you that after 1942 no workers came to Germany voluntarily any more. Do you want to apply that statement to all foreign workers, or only to eastern workers?

A. Without a doubt I was thinking of all foreign workers, Frenchmen and Italians as well.

Q. Do you maintain that assertion if I put to you a letter of a French corporation, for instance, of January 1943, which speaks of a certain number of volunteers who are to be employed in the plant, or if I put to you a foreign telegram which also speaks of volunteers in 1943?

THE PRESIDENT: Just a moment, Mr. Witness.

MR. VAN STREET: Mr. President, I have to object to that question. I think that should properly be considered to be a part of the Defense's case, and the witness has already testified as to what he knows about this particular situation, and I think that this should not be referred to him and then ask him to conjecture, because that is what his answer would be in reference to that.

DR. GIERLICH: May I answer that very briefly? Mr. Van Street, you misunderstand me. I am not introducing these documents. I am merely putting them to the witness to refresh his memory. I can certainly not introduce them now, only in my defense, at a later period.

MR. VAN STREET: Mr. President, I do not see how Defense counsel can use this particular document to refresh the witness's memory providing, - that is, if this document has never come to the witness's attention before.

THE PRESIDENT: That is correct, if it is a matter about which presumably the witness has some knowledge, you can refresh his recollection about it, but otherwise, you might bring in a hundred letters or telegrams that he had no knowledge of whatever, and in its present form that objection is well taken.

You can ask him whether he knows anything about any such letters or telegrams as that. If he does and that changes his mind, that would be proper.

MR. VAN STREET: Thank you.

DR. GIERLICH: Then I withdraw my question, Mr. President.

THE PRESIDENT: Is there any further cross-examination, gentlemen?

And re-direct?

MR. VAN STREET: A very brief re-direct.

RE DIRECT EXAMINATION

DR. STRUSS

BY MR. VAN STREET:

Q. Mr. Witness, we are all aware of the difficulties incident to remembering sharply and clearly matters which happened a long time ago, and particularly when a multiplicity of such items are being put out. With that in mind, I would like to refer to you - and I am having handed to you - an interrogation dated 20 March 1947, undertaken by myself and Mr. Hauptman, of you in Frankfurt.

If the Tribunal pleases, --

THE PRESIDENT: Is this an interrogation of this witness?

MR. VAN STREET: Yes, Your Honor. This, if the Tribunal pleases, goes to simply one matter, and that is the use of these particular TEA charts, which have been discussed at great length by the members of the TEA, and the discussions pertaining to these charts.

DR. METZLER (Counsel for the defendant Haefliger): The Defense would be grateful if the Prosecution would furnish us with a copy of this interrogation, because we are not aware of the contents of this interrogation; so far, this has not been introduced in this trial.

MR. SPRECHER: Mr. President, I would be very glad for the Defense to see this particular document. This is one of the ancient reservations in Nurnberg with respect to presenting documents, and I don't think that we should change the practice at this time. We could not process every possible document which might be referred to for some brief

minute, by some possible witness, at some possible time, but you are perfectly free to see the document, now that it has been shown to the witness. There is no question about that.

THE PRESIDENT: Under the circumstances, if counsel for the Defense requests the document, it will be made available to him.

Very well. Ask your question.

BY MR. VAN STREET:

Q. Mr. Struss, I now refer you to page 7 of the German, in your copy of the interrogation.

THE PRESIDENT: Now, counsel, the Tribunal understood that you were calling his attention to this with the purpose of refreshing his recollection. If you get before the Tribunal, some part of the document, the obligation will be on you to make it available to us, and then you get yourselves in the position of making it an exhibit.

Are you merely trying to refresh his recollection from that as to some specific thing?

MR. VAN STREET: That is all, Your Honor.

THE PRESIDENT: Direct his attention to it, and then ask him the question. That would be proper.

BY MR. VAN STREET:

Q. I ask you, Dr. Struss, to review the questions and answers contained on a part of page 6 of the German, in reference to the use of these charts which were submitted to the TEA, and to the discussions which took part on the part of the members of the TEA in reference to these charts, particularly the workers on the Arbeiter chart.

I now ask you, in order to make the record sharp and clear, whether or not discussions took place among the members of the TEA, in the TEA meetings, on these charts, in reference to the numbers of workers at each of the large plants and combines, with the ultimate objective of allocating

credits for those particular plants and combines?

A. At the bottom of page 6 I see one answer, and it says almost exactly the same thing, that the affidavit 4999 states. Here too I mention the two names, Gajewski and Amoros, and I remember that these two gentlemen discussed, with the aid of the charts, the difficulties of working with so few German workers. It is possible that other gentlemen also said something about the conditions in their plants with the help of these charts, but no major discussion of these charts took place. That was not the purpose of these charts, as you can see for yourself.

MR. VAN STREET: Thank you very much.

THE PRESIDENT: Is there any further cross-examination? Then the Tribunal will consider as closed the cross-examination of this witness, as it applies to the one affidavit which is at present the subject of the inquiry.

Is it your purpose, Mr. Prosecutor, after the recess to go on with this witness?

MR. VAN STREET: Mr. Amchan, Your Honor, will put on the affidavits appertaining to it.

THE PRESIDENT: It is too near our recess hour to start now, and we will rise for our recess.

THE MARSHAL: The Tribunal will be in recess for fifteen minutes.

(Tribunal in recess until three-fifteen o'clock.)

THE MARSHAL: The Tribunal is again in session.

DR. BOETTCHER: Mr. President; I have heard that the Tribunal desires an answer to the question of whether we waive the cross examination of the witness Ehrlich. The defense declares that we do waive this cross examination.

THE PRESIDENT: Very well.

MR. SRECHER: Mr. President, may I make the announcements? Sometimes Your Honors depart, leave rather rapidly at the end of the afternoon and we can't make the announcements. Do you mind?

THE PRESIDENT: No. That is all right.

MR. SRECHER: For tomorrow, we would like to have Your Honors, defense counsel, and the defendants bring the following books, because they are the first books which we will go forward with in the presentation, and this is a modification of what we had previously stated. We will go forward in presenting documents, when we next do present documents, first with Book 91 and then with Book 66, and that should not take, together, more than half an hour. And when we next present books, we will go forward with Books 84 through 88. After I have presented the materials in Book 91, we will call Oswald Pohl as a witness, and thereafter, as soon as we can make the arrangements, we will call Schlotterer -- his affidavit is in Book 63 -- Gen. Wolff, whose affidavit is in Book 91, and Reuther, whose affidavit is in Book 10. Now Mr. President, there is one addition with respect to Pohl. He has an affidavit in Book 67 and one in Book 91.

Now, Mr. President, there is one question which I would like to take up with you now concerning Ohlendorf. He is one of the leading defendants in the so-called Einsatzgruppen Case, and that case is being heard currently, and the hours

are approximately the same as the hours which Your Honors hold here. If he is to be brought into court, some arrangement will have to be made with that Tribunal, and I would like to suggest that Your Honors could probably make some arrangement in that connection much more authoratively and effectively than what the Prosecution can do.

THE PRESIDENT: Would you be able to indicate when you would like to have him, if we can make that arrangement with the other Tribunal?

MR. SPRECHER: As soon as possible, Your Honor, after the presentation of Book 91, which will be just after the witness Struss is done. In other words, I don't think you could arrange it for tomorrow, and therefore any time next week --

THE PRESIDENT: What is that witness's name?

MR. SPRECHER: Ohlendorf.

THE PRESIDENT: What is the book?

MR. SPRECHER: The book is Book 91.

THE PRESIDENT: Did I understand -- I think I have my memorandum straight except as to one thing. I wasn't sure about the books in which the affidavits of the witness Pohl are. Is that 67 and 91?

MR. SPRECHER: Yes.

THE PRESIDENT: Then I am right.

DR. NELTE: Mr. President, I hear that tomorrow Book 87 and 88 may be offered. Today I received Book 87. In Document NI-12452, the affidavit of Dr. Tondos, Wladislaw, you will find the following quotation: "The witness turns over the case histories in the form of loose, handwritten pages, giving the temperature and pulse curves, and typewritten

reports on the autopsies on the prisoners Weinblum, Lajzor", and the names of about ten dead persons. These pages which the witness handed over during his interrogation are not included in the document book. I should like to ask the Prosecution to try to put these case histories in evidence. Another document is the affidavit of Dr. Wladislaw Foikel, NI-12451, which contains the following sentence: "The witness submits an unsigned, three-page, typewritten document dated Auschwitz, 8 February 1943." In view of the significance of this testimony of the prisoner doctors Tondos and Foikel, I should like to ask the Prosecution to put these two documents in evidence so that I may prepare myself for them.

MR. MINSKOFF: If it please the Court, any documents that the Prosecution has that are referred to will of course be brought before the court and identified and put into evidence. With respect to certain documents, the witness who had the documents and who saw the documents will be brought before this court. The man Tondos who is mentioned, will be before this court as a witness. He is on his way here from Poland.

THE PRESIDENT: Very well. Then the documents will be made available.

MR. MINSKOFF: In the case of certain documents, they may still have them. They are bringing them with them. In the case of others, he may identify them from his memory and testify personally as to what he saw and the documents he saw. Any documents that are available will be brought before this court.

THE PRESIDENT: That is as far, of course, as you can go. Yes.

DR. NELTE: Mr. President, the contents of the testimony

read "The witness turns over the case histories," and in the other case, "The witness submits a three-page document." These two documents must be in the hands of the Prosecution. Before the witness appears here and can be cross examined, I believe I must have access to his complete testimony, which includes these documents.

THE PRESIDENT: Are the documents in the files of the Prosecution?

MR. MINSKOFF: No, Your Honor. These affidavits that he refers to were not taken by the Prosecution or by any member of the Prosecution staff. They were taken in Poland, by Polish authorities, and any of them that are available will be brought here with the witnesses when they come here from Poland.

THE PRESIDENT: Have you requested that they bring them?

MR. MINSKOFF: Yes, Your Honor.

THE PRESIDENT: Very well. Now, before we take up the cross examination of the witness on the stand, with respect to the other exhibits that the Prosecution announced before recess, the Tribunal has been hopeful that its order, which just became effective today, might facilitate an extensive consideration of testimony of this witness so far as these documents are concerned. We have reference to the order authorizing some assistance to the Defense staff with reference to material that is in the offices at Frankfurt. Is it possible that a part of this field of cross examination can be limited and restricted so that those matters can be reconciled after these special representatives of the Defense get access to the documents and go over them? The Tribunal is just a little bit apprehensive about launching out here on the cross examination of a witness with reference to what

we remember to be sixteen documents as to when this thing will end. What have you to say, Mr. Prosecutor?

MR. AMCHAN: If Your Honors please, we had that especially in mind with respect to this witness, and the Defense and the Prosecution and the witness have conferred at length, in an effort to agree to modifications and changes, and we have arrived at a stipulation, which is rather brief, which we propose to read into the record, and at the conclusion of that stipulation there are certain documents which we could not agree to which are earmarked for cross examination.

THE PRESIDENT: That is very fine. The situation is not so bad as we feared. So, let's have your stipulation.

MR. ARJMAN: This stipulation is entered into between the Prosecution and Dr. Berndt representing all of the defendants, and it pertains to the balance of the affidavits of Dr. Struss, fifteen in number, relating to Count 1. The stipulation reads as follows:

The following affidavits in evidence, which have been executed by the witness, Dr. Struss, are hereby changed and modified in the following respects:

Exhibit 95, NI-8326, English Document Book 5, page 17, English Document Book 20, page 44. Incidentally, the defense have a copy of this stipulation in front of them. On page 7 of the English text of the document, under Item 5, June 1936, the sentence reading "Utmost speeding up of the future developments and the avoidance of useless investigations." The words "useless investigations" should be stricken out and the words "uneconomical investments will substituted.

Exhibit 547, NI-7241, English Document Book 28, page 21, on page 7 of the English text, the third paragraph reading "The year 1936 brings a marked sudden change in the attitude of the military authorities with regard to the Bunc question, "the words "military" should be stricken.

Exhibit 612, NI-10,008, Document Book 34, page 115, no stipulation with respect to this document.

THE PRESIDENT: What was that exhibit?

MR. ARJMAN: Exhibit 612, NI-10,008, Document Book 34, page 115. And when I say "no stipulation" you will see at the end of the stipulation that it is set aside for cross examination which we shall identify.

Exhibit 613, NI-10,019, Document Book 34, page 116. No stipulation with respect to that exhibit.

Exhibit 614, NI-10,026, Document Book 34, page 122; Exhibit 689, NI-10,025, Document Book 32, page 64; Exhibit 710, NI-10,027, Document Book 37, page 126, as to these three documents, the prosecution

agrees that if the starting point of the graph on each of these documents was of a period of years prior to 1932 they would indicate after these prior years a higher point than the year 1932, which is the first year shown on the graphs of these three documents. I might interpolate and say that with respect to those three exhibits they were graphs and the starting point of the graphs was 1932 and the defense counsel thought that they would like to go back and show the figures for a period prior to 1932. Rather than go into those figures, we agreed that if you would go into the figures 1932 would be the low point on the graph.

Continuing with the stipulation. Exhibit 615, NI 10010, Document Book 34, page 125, no stipulation.

Exhibit 658, NI-10,009, Document Book 36, page 108, no stipulation.
Exhibit 708, NI-10,021, Document Book 37, page 21, no stipulation.

Exhibit 687, NI-10,007, Document Book 32, page 54, in item 3 of this document relating to the investments for explosives appears a total figure covering the years 1932 to 1944 indicating investments in the amount of 100.7 million Reichsmarks. This figure purports to represent the investments figures as shown by the books of Dynamit A.G. The Prosecution accepts the additional statement of the defense with respect to this figure, namely that according to the incomplete records of the TEA, an amount of only 61.1 million Reichsmarks is shown for investments in explosives and of that latter amount approximately 16 million is properly allocated to investments relating to plastics, since plastics were not segregated from the investments for explosives which were commingled with such investments. This would leave a balance, according to the incomplete records of the TEA for investments in explosives by Dynamit A.G., of approximately 45 million Reichsmarks. Item 2 of this document, which indicates the investments for Diglycol, shows the amount of 32.2 million marks. Prosecution accepts the modification desired to be made by Dr. Struss so as to note

that this figure represents investments by the Montan Co., the operating company of the German Army Ordnance Office, with respect to investments figures under "stabilizers" in the same document, the amount of 24.8 million Reichsmarks, the prosecution accepts the modification desired to be made by Dr. Struss so as to note that this figure represents investments by the Montan A.G. the operating company of the German Army Ordnance Office.

Exhibit 688, NI-10,020, Document Book 32, page 58. This should be modified to conform to the changes made in the preceding document, namely Exhibit 687. Accordingly, on page 2 of the English copy of Exhibit 688, under the item relating to Diglycol, the following should be substituted for the paragraph which presently appears in the affidavit so as to read as follows: "Diglycol is produced at Ludwigshafen, Wolfen and Wendorf. No investments have been made in Ludwigshafen. At Wendorf and Wolfen, investments were not financed by I.G. but by Montan." On page 3 of Exhibit 688, under the paragraph relating to explosives and gunpowder, that paragraph will be modified to conform to the modification made with respect to Exhibit 687, NI-10,007, wherein an explanation was made relating to the figure of 1007 million marks investment for explosives. On page 3 of Exhibit 688, NI-10,020, under the subdivision relating to synthetic gasoline the following paragraph should be substituted for the present paragraph and will read as follows: "Synthetic gasoline. The charge shows the investments for Louna and Oppau. The Heydebreck investment does not appear on the chart since this plant was financed by the Reich. The Moosbierbaum figures are not shown on the chart either since the plant was not engaged in manufacturing synthetic gasoline but only in refining petroleum." Paragraph 14 of Exhibit 688, NI-10020, deals with the subject of stabilizers. This is modified to conform to the modification herein made with respect to Exhibit 687, NI-10,007, wherein the investments by the Montan Co. Further, at the Uerdingen Plant, which was

Farben owned, no investments with respect to stabilizers were made by Farben.

Exhibit 707, NI-7236, Document Book 37, page 26, the prosecution will withdraw this exhibit with the following statement. The affidavit of the witness Struss refers among other things to the peacetime and war uses of the products listed. Since the submission of this affidavit, the prosecution's expert witness, Mr. Elias, testified at length, and was cross examined at length, as to the technical uses of various products; and in the interest of expediting the trial we are withdrawing this earlier evidence on the same subject matter.

By virtue of the foregoing stipulation, the defense will limit the cross examination of the affiant Struss to the following affidavits: Exhibit 612, NI-10,008; Exhibit 613, NI-10,019; Exhibit 615, NI-10,010; Exhibit 658, NI-10,009; Exhibit 706, NI-10021; Exhibit 687, NI-10,007; Exhibit 688, NI-10,020; Exhibit 693, NI-10,011; Exhibit 695, NI-10022.

Q Dr. Struss, have you any further clarifications to be made other than those mentioned in this stipulation with respect to these exhibits?

A No.

Q Dr. Struss, have you before you NI-10,011, which is Prosecution Exhibit 693, and NI-10,022, which is Prosecution Exhibit 695?

A Yes.

Q That appears, if your Honors please, in Book 32. One is at page 77 and one at page 21.

Now, with respect to NI-10011 I call your attention on the first page to the item of 96,000,000 Reichmarks as being an investment with respect to the Heydebreck Plant. And, I also call your attention to NI-10022, on the second page of that document where under Heydebreck appear two items of 40,000,000 each and then an item of 16,000,000.

THE PRESIDENT: I will say to counsel that all of our efforts to keep track of these exhibits is predicated on the exhibit number rather than the document number in our files. It would simplify matters when you ask these questions if you use the exhibit number. If you wish to use the other that is agreeable but if you will get the exhibit number in to the record that will help us to follow through on these exhibits.

MR. AMCHAN: I will do that. Now, on Exhibit 693, NI-10011 and Exhibit 695, that is NI-10022 - now, is this a fair statement, Dr. Struss, that in exhibit 693 where 96,000,000 is mentioned as an investment for the Heydebreck Plant and in Exhibit 695 where again 96,000,000 is mentioned as a loan with respect to the Heydrich Plant, that they both cover the same subject matter - is that a fair statement?

A Yes, the 96,000,000 are the same sum in both cases.

Q Am I correct then, Dr. Struss, if we delete from Exhibit 695 the 96,000,000 Reichmarks which is characterized as a loan that the misunderstanding between these two exhibits will be clarified?

A Yes.

Q The witness is ready to be cross-examined, and I understand if your Honors please, that the defendant ter Meer would like to conduct the cross examination.

THE PRESIDENT: Very well.

CROSS EXAMINATION

BY DR. BERNDT (For the defendant ter Meer):

Q I have only one brief question to put to the witness. Dr. Struss, Dr. Struss, I have a question to put to you. Can you

remember that in 1937, perhaps April 1937, you were at a meeting in Berlin with Dr. ter Meer, and the Reich Minister of Economics Schacht, was also present?

A Yes. The Reich Minister of Economics Schacht presided at this meeting.

Q Was the question of the production of artificial rubber discussed at this meeting?

A Yes, that was the purpose of the meeting. The money to build the first Buna Plant was not available, and we wanted to find a way to get this money.

Q Was this way found?

A Yes, by a very simple suggestion on the part of Dr. ter Meer, suggesting that a duty be put on natural rubber and that from the income from this duty the Reich should loan 90,000,000 marks for the first Buna Plant.

Q And this suggestion was accepted?

A Yes, the suggestion was immediately accepted by Minister Schacht.

Q And later it became law?

A Yes, that went very fast, I am sure, but I cannot remember these things exactly.

Q No further questions, Mr. President.

I should like to ask you, to permit Dr. ter Meer to put a few brief technical questions to the witness.

THE PRESIDENT: Very well. The defendant ter Meer may proceed with the cross examination of the witness.

MR. SPRECHER: Mr. President, so long as these questions are really technical questions we are not going to make any objection; the practice as you have not before, has developed. But we do think that if the questions get beyond technical questions the examination particularly under these circumstances, should revert back to counsel.

THE PRESIDENT: Let's not anticipate that anything bad is going to happen. Perhaps it won't.

BY DR. TER MEER:

Q Witness, we will begin with your affidavit NI-10007, Book 32, Exhibit 687, on page 57 of the German and 54 of the English Book 32.

Before I ask you any questions on this exhibit, I should like to come back to one basic matter. Mr. President, may I mention that when this exhibit was introduced in Court that at that time the question was asked whether the heading of "Strategic Material" was the right one or the heading used in the German language, that is to say, "Important Material." You have at that time ruled "Whether the materials listed in the chart should be classified as strategic or important really is a matter for the Tribunal to decide. I think we can solve the whole problem by just on our copies striking out that line on that heading." I am going to follow us this rule and not to mention the heading of this affidavit and the similar affidavits that follow. This question will not enter into the cross examination at all.

THE PRESIDENT: Very well.

BY DR. TER MEER:

Q Witness, did you understand what I said about the heading?

A No, I did not understand the question.

Q Then I shall repeat it.

A Yes, oh, yes, I heard what you said.

Q There are two different headings in the affidavit, and we will not go into this.

A Yes, I understood that.

Q Now I come back to Exhibit 687, and at the same time I should like to deal with Exhibit 688, which includes the explanation of 687. This is in the same book - Book 32, page 61 of the German and 58 of the English. It is NI-10020.

In #3 of this explanation you say that the investment costs given in the chart are the costs of general and subsidiary installations: workers, quarters, etc. Can you tell me, witness, what the proportion was of a general facilities to the actual production facilities?

A Yes. That was about 50-50. That is to say, if in the case of sulphuric acid you have 50 or 100 million, that means that for sulphuric acid proper there was possibly 50 to 60 million spent, and everything else was for subsidiary facilities of the plant.

Q Then production facilities installations proper had about 1/2 of the amount?

A Yes.

Q Is it not so that investments devoted to actual production facilities were devoted to modernization of the plant and the improvement of processes, of course, in addition to increasing production?

A Yes, that is true. Modernization and improvement played a considerable role in the great development of technique in these years.

Q You no doubt remember, witness, that in 1932 - the year of the height of the depression - production in our plants had fallen off considerably and in the years 1933 to 1935 recovered only slowly?

A Yes.

Q In these first years, was it not our endeavor to help to reduce unemployment in Germany?

A Yes, I can give a very pertinent example, that was the Bosch mine in central Germany. A new mine was opened which was actually not yet necessary - the only purpose was to create work.

Q You yourself have given an example. You will confirm that we tried to create work to a considerable extent, especially by modernizing and improving processes, particularly in the first years when the increase in production was not so great.

MR. SPRECHER: Mr. President, the Prosecution submits that these are not technical questions and that it is a somewhat unusual circumstance for the defendant to be cross-examining a witness with leading questions, particularly where this defendant was the immediate superior for many, many years with respect to this witness.

THE PRESIDENT: On the basis of the objection, the Tribunal sees no reason why this defendant may not interrogate this witness in view of the

precedents that have been established before this and other Tribunals. Of course, the witness should not undertake to testify himself, and the Tribunal believes that he understands the practice, at least he has not transgressed up until this time. If he does, counsel for the Prosecution may make a timely objection. There is nothing improper about this cross examination thus far, and the defendant may proceed with his cross examination.

BY DR. TER MEER:

Q As was mentioned before - oh, you haven't answered my question yet. I said that to a considerable extent we carried out such modernization for the purpose of creating work, during the first years. Is that right?

A Yes, by far.

MR. ALCHAN: If your Honors please, I thought the purpose of stipulating a fact obviated the need of cross examination. We stipulated 32 was the low point.

THE PRESIDENT: As we recall, you made no stipulations with reference to this affidavit, did you?

DR. TER MEER: That was in reference to the charts, but not in reference to this affidavit.

THE PRESIDENT: Yes, we so understood it. The defendant surely has the opportunity to explain the significance of the figures and the facts contained in this affidavit. The defendant may proceed with the cross examination.

BY DR. TER MEER:

Q Witness, would it have not been more correct, for comparison of investments of I. G. Farben in the years 1932 to 1934, to give the years before the beginning of the depression, that is to say 1927 and 1928?

A Of course that would have given a completely different picture.

Q Would the picture not have more correct?

A Yes, I believe so. My compilations give the curves from 1925 from the beginning of I.G. Farben.

Q Of course you cannot give us the investments of earlier years, product for product, but you no doubt have some recollection of the total investment of Farben. Is it true that in 1927 and 1928 it was about 250 million marks each, a figure which was not surpassed until the year 1937?

MR. AMCHAN: I am sorry, I will have to object, Your Honor. The chart does begin with 1932; that is the purpose of the chart. To go into detail year by year...

THE PRESIDENT: But certainly, Counsel, the defendant has a right to test the effect of using a 1932 figure by showing that it isn't a normal basis for calculation. He is not bound to accept those figures as the basis for the conclusions that may be drawn from them, whether it be one or the other. And in view of the breadth of the field of cross-examination, it is certainly proper for this defendant to ask this witness whether or not taking a year 1932 is a fair test or a fair standard by which to measure these trends.

The objection is over-ruled.

BY DEFENDANT TER MEER:

Q I just asked you whether it was correct that in 1927-28 we had an annual investment of about 250 million marks, a figure which was not surpassed until 1937?

A Yes, that is true. The expenditures in 1927 and 1928 were about 250 million, and fell to 20 million in 1932, and did not rise above the figures of 1927-28 until 1937.

Q Dr. Struss, in the stipulation a little while ago we heard that the installations produced by public funds can not of course be considered an investment of Farben, and a correction to that effect was agreed upon between Prosecution and Defense.

Can you now tell me what was the policy of Farben with regard to Reich-owned stand-by plants? Please, just briefly, in a few words.

A Our policy was that these Reich-owned plants be kept completely separate from our other plants. Is that what you mean?

Q Yes; that was one point; and I also wanted to ask you whether it was not also our principle to refuse to supply I.G. capital for stand-by plants since no employment was to be expected here in normal times, and the economic prerequisites were not fulfilled?

A Yes, that was our general policy.

Q Now, I should like to go into a few products which are listed in the table. First: nitrogen. The primary product of nitrogen synthesis, by the Haber and Bosch process, is ammonia. Is it true that up to the outbreak of the war Farben did not have any new investments for ammonia because the existing production capacity was much greater than the need? I am speaking only of ammonia proper.

A In any case, the investments were extremely low.

Q Is it true that Farben did not have any investment for concentrated nitric acid, so that the Reich built stand-by plants?

A Yes; that is true.

Q In your opinion, what was the purpose of the investments in nitrogen in the years 1933 to the outbreak of war, which were not insignificant sums?

A Merely the improvement of the production of fertilizer nitrogen.

Q Under "explosives" and "gun powder" we have also read in the stipulation that the figures were changed. Therefore, I shall not go into these figures in detail.

I come to "synthetic fuels." You know that the first I.G. gasoline plants were built in 1937 for 100,000 tons per year? Is that true?

A Yes.

Q You also know that there were very great technical difficulties, and that these were overcome only about in 1931? Is that also true?

A Yes...somewhat later. As far as I remember, it was 1932.

Q We just said that the nitrogen capacity in the years of the depression was much higher than production. Was it not so that in the Leuna plant it was desired that the unused hydrogen facilities of nitrogen synthesis be made useful and be employed in increasing gasoline production?

A Yes; as far as I know, the nitrogen capacity was considerably reduced in favor of the gasoline capacity, which was increased.

Q The nitrogen capacity was not used completely because exports and sales had been reduced. Is that what you mean?

A Yes; that is what I mean.

Q Do you know in what year the negotiations with the Reich Ministry of Economics began which in the end led to the gasoline contract with the Reich in December 1933?

A No, I do not know that.

Q You will confirm that the investments given here under synthetic fuels up to about 1938--1937-38--served the purpose of building the gasoline plant in Leuna for an annual capacity of about 350,000 tons of gasoline?

A Yes.

Q I have no special questions on synthetic rubber. Up to the outbreak of the war, the investments were in Schkopau and Huel. You will confirm that?

A Yes. And a small amount to Leverkusen.

Q Leverkusen--the big laborator and the small production plant, yes.

THE PRESIDENT: Just a little slower, please. You are imposing a little too much on the translation staff.

Q Now, I come to magnesium. The new investments in this field affect processing plants in Bitterfeld and the new construction of the two plants Aken and Stassfurt. You no doubt agree with me that the construction of Aken and Stassfurt was initiated by the Reich Aviation Ministry in the course of rearmament?

A Yes, I believe I emphasized this in my affidavits.

Q But since Farben financed these plants, there must have been motives of private business too. Is it true that Farben in the long run expected a great increase in the use of magnesium for purely economic purposes, such as civilian aviation, Volkswagen plants, light construction, buses, ship building, and other technical uses?

MR. AMCHAN: That is objected to, if Your Honors please.

THE PRESIDENT: What is the basis of your objection?

MR. AMCHAN: The basic objection is he is asking for motives of production.

THE PRESIDENT: The question was: What was the policy of Farben—was it not?

MR. AMCHAN: As I recall it, wasn't there something about the motive of profit to put those to certain uses?

THE PRESIDENT: Objection is over-ruled.

BY DEFENDANT TER MEER:

Q I will not go into aluminum; but you will be able to confirm that these investments were made reluctantly, but in the interests of our partner, the Metallgesellschaft, our participation in German aluminum production was made according to quota.

Q Concerning investments for sulphuric acid, chlorine, and caustic soda, is it not so that here, in addition to the increase of production, there was an especially great extent of modernization; for example, the modernization of the sulphuric acid plants in Ludwigshafen, in Hoechst, in Leverkusen, and the introduction of mercury cells for electrolysis in almost all our plants? Is that true?

A Yes, that is true.

Q With respect to the investments for calcium carbide, in methanol, and in other solvents, is it true that the development of new solvents, but lac, the higher alcohols, and the production of new synthetics, as well as the increased need for cellulose acetate for silk and synthetics, was the decisive element in the investments?

A Yes; that is true.

Q Now, if I consider investments up to the outbreak of war, and if poison gases—which were only a small amount—and explosives and gunpowder, and magnesium are ignored, is it not true that with respect to the rest of the investments of Farben up to the outbreak of the war economic motives were decisive?

A As far as I know, exclusively economic motives.

Q If there had been no war, Dr. Struss, would these investments not have been quite sound. In a peace-time economy would this not have brought the expected profit?

A I have always been of that opinion, and I am sure that that opinion is correct.

Q Dr. Struss, if you look at the table 10007, table 2, and compare the total expenditures in 1938 and 1939, you will notice that the expenditures in 1939 were about ten percent lower than 1938. Do you remember the reason?

A Yes; I remember very well that Geheimrat Schnitz had great misgivings. He feared that our expenditures would go beyond the depreciation. We always thought in Farben that it was sound to build new structures within the framework of depreciation. Since these expenditures were much higher than the depreciation, Geheimrat Schnitz, one day in 1937 or 1938, I believe it was 1937, suggested that the expenditures of Farben be reduced to the amount of the depreciation. I do not know whether this is what you mean.

Q. Yes, that is what I mean. The decision was made in the fall of 1937, according to the TEA records, and in 1938 it was put into effect as of 1939.

THE PRESIDENT: That is not a question. That may go out as a statement of the defendant.

BY MR. ter MEER:

Q. Dr. Struss, it is no doubt true that the greatest investments of Farben before the outbreak of war, in the years 1933 to 1939, were for gasoline, rubber, and artificial fibers or the cellulose needed for that purpose. Is that true?

A. Yes; synthetic rubber, synthetic fuel,

Q. Artificial fibers are not on here. They are on a different table.

A. Yes, they are on a different table, but these were very high investments, too.

Q. In these fields, did Farben have especially high profits which could be compared, for example, with the profits for dyes, pharmaceuticals, and other fine chemicals?

A. In the field of rubber there was at first no question of profit. In the field of fuel, I believe later -- if I remember correctly, on the basis of licenses -- was a little better, but the profit was not very high. In the field of synthetics, of course, there was little profit in the first years.

Q. I am basing my comparison on the high profits in dyes, pharmaceuticals, and other fine chemicals. Was there a considerable difference?

A. Yes, there was a great difference.

Q. Now I come to Exhibit 693, NI-10011, in Book 32 on page 36 and also Exhibit 695, NI-10022, Book 32, page 82. English pages 21 and 77. The Prosecution has already brought out the fact that one figure is given in both affidavits and has corrected this. Therefore, I can limit myself to two brief questions. Is it true, Dr. Struss, that the

great majority of these subsidiaries, loans, and investments of Reich agencies were given after the outbreak of war, especially the big sums for the Herdebreck, Gendorf, Dyhernfurt, Falkenhagen, and Woosbierbaum plants?

... I believe that the sums which you have mentioned were all given after the outbreak of war.

Q. Do you know that some of these sums were never used or were not fully utilized.

A. Yes. I said so in part in my affidavit.

Q. That is all in Book 32.

Now we come to exhibits 612 and 613, Book 34, NI-10008, and NI-10019, pages 220 and 221 in the German book, pages 115 and 116 in the English book. In these affidavits you deal with the production of eighteen chemical products, and as the explanation shows, you have included production in the standby plants as far as they were operated by Farben or subsidiary companies. I should like to ask you, in the years before the depression, 1927 and 1928, was not production in most of these products which were already being produced at that time higher than in the first years 1933 to 1935 or 1936 on this chart?

... I would have to see that in detail. Nitrogen, for example was much higher in the earlier years.

Q. He will not talk about explosives.

A. Synthetic gasoline was not produced yet. Magnesium was somewhat higher. Aluminum was about the same. Sulphuric acid was much higher. Chlorine was much higher. Caustic soda was much higher. Also calcium carbide -- No, Calcium carbide was only built later. I have to take that out. Sodium cyanide was higher. Stabilizers -- I don't know that by heart. Methanol and solvents were in part only developed later with new products.

Q. In the explanation, Exhibit 613, you say that your figures are in part based on estimates. Now we know that the TEL office was in general in complete charge of products of Sparte II, but for the products

of Sparte I, specifically during the last years of the war, the TEA office was not completely informed. Is that correct, Dr. Struss?

A. Yes, but in the chart I have always indicated where I could not get any figures or where I gave an estimate.

Q. In respect to explosives and gunpowder you say that these figures come from material compiled by the Control Office in Frankfurt after the end of the war. It is true then that you and the TEA did not have these figures before the end of the war?

A. No, we never had them.

Q. As far as the production of I. G. plants proper is concerned, excluding Dynamit Nobel, is it true that in this list of production figures for explosives and gunpowder there is only one product for the I. G. plants — binitrobenzol?

A. Yes, binitrobenzol is the only one that appears.

Q. That is a dyestuff intermediate and can be used for explosives in wartime, is that right?

A. Yes, that is right. It is used in war only for subsidiary purposes when there is a lack of good explosives.

Q. Now if we look at the table 10008, we will see in all products, I believe without exception, an increase of production from year to year. Is it true, Dr. Struss, if I say that there are a number of factors responsible for this regular increase in production up to the outbreak of war, and can you tell me what some of these factors are?

A. Yes, I can only say that I have followed up the development of industry in other countries, too, especially in the United States, and that the development was absolutely parallel with developments in Germany. Consequently, I considered this upward development as improvement of the economic situation.

Q. Is that the only cause? You probably know that exports were not very great in these years, but were not a number of legal measures taken in Germany at that time which were responsible for a strong economic

improvement within the country which, in my opinion, had an even more immediate effect than the economic betterment outside of Germany, including the United States?

MR. AMCHAN: I would prefer that he put a question rather than express an opinion.

DR. TER MEER: I asked for the motives which were the reason.

THE PRESIDENT: The question is proper except for the observation injected in it by the defendant as to what his own opinion was.

Mr. Witness, if you can, answer the question and ignore the observation of the defendant as to his own personal opinion, you may answer.

A. Well, I am sure that many measures were taken in Germany which improved and increased production.

BY. DR. TER MEER:

Q. If I point out to you the increase in the production of nitrogen, which more than doubled by 1939, what was the main reason?

A. At first, as far as I know myself, National Socialism was very much against artificial fertilizers, but later the attitude was completely changed, and artificial fertilizer was promoted; and I can remember that the plans of the State authorities went far beyond the plans of Sparte I of Farben.

Q. And was not the promotion of settlement construction a factor?

A. Yes. There was a need for paints, varnish, etc. That, no doubt, was a contributing factor.

Q. And by the elimination of unemployment, was there not a great increase in the buying power of the population?

A. Yes, certainly, but in my first answer I say that the purchasing power of the population increased in other

countries, too, and this brought about a general improvement in production.

Q. And finally rearmament also played a role, is that not true?

I asked you whether rearmament did not play a role up to the outbreak of war?

A. Yes, certainly.

Q. I should like to ask you some questions on a few products. Do you recall that in 1928 primary nitrogen production was over 600,000 tons for the same plants which you are dealing with here?

A. I do not have these figures in my head exactly, but the figure which you give is no doubt approximately correct. In any case it was much higher than later on.

Q. Higher than by the outbreak of war, is that right?

A. Yes, that's right.

THE PRESIDENT: If the defendant pleases, it is time to recess for the day, and the Tribunal will now rise until nine-thirty tomorrow morning.

(The Tribunal adjourned until 0930 hours, 21 November 1947.)

Official Transcript of the American Military Tribunal No. VI in the matter of the United States of America, against Carl Krauch, et al, defendants, sitting at Nurnberg, Germany on 21 November 1947, 0930 hours, Justice Shake presiding.

THE MARSHAL: Military Tribunal VI is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, will you ascertain if all of the defendants are present in the Courtroom?

THE MARSHAL: May it please your Honor, all of the defendants are present in the Court.

THE PRESIDENT: Has the Prosecution any announcements?

MR. SPRECHER: Mr. President, I think that the general schedule we indicated yesterday still holds, only the following. Defense counsel, as well as the Prosecution, have been somewhat concerned about what our schedule would be so far as hearing dates are concerned up to Thanksgiving.

THE PRESIDENT: Very well, we will discuss that a little more. Is there anything Dr. Boettcher, from the Defense?

DR. BOETTCHER: Mr. President, the question of a number of affiant witnesses was discussed yesterday, and I should like to say something very briefly to the names mentioned by Mr. Dubois. First quite generally the Defense in its resolution about the treatment of the witnesses mentioned, started out from the following point of view.

The Defense counsel feels that cross-examination is necessary if an affiant is the only witness for a particular fact. And furthermore, if the affiant did not testify about facts, but opinions.

Yesterday during the discussion of the Defense, we went through the names mentioned by Mr. Dubois, and I may give you the results of our consultations very briefly.

First, I waive cross-examination in the name of all Defense counsel, of the witness Frank-Fahle, in regard to Exhibit 1069. In regard to the

other affidavits, a statement is not possible, because they have not yet been introduced.

I waive Johannes Marx, and Elisabeth Michalke.

From the point of view that I mentioned, if a witness is the only witness, the Defense believes that it has to insist on cross-examining the following witnesses:

Allen Williams, who is the only witness as to events in the Camp Heydebreck.

Balandier, who is the only witness about events in the Bitterfeld Camp.

Hapzack, who is the only witness about events in the case of looting of Winnica.

Van Mol, who is the only witness about incidents with foreign workers in the Wolfen Film plant.

For the point of view mentioned, the only witness who also testifies as to opinions, the Defense considers important to hear the witnesses, Dr. Johann and Rottenberg, who can testify about events in Austria when shares were taken over.

If it should be difficult to procure these gentlemen for the Tribunal here, the Defense would be agreeable to have a Commissar in Vienna examine these people if the Defense is present.

The witness, Olga Lenger, was eliminated as I heard from Dr. Nelte, because they were able to reach a stipulation with the prosecution, - or, they are to reach a stipulation with the prosecution about shortening these affidavits.

The witness Dietzsch and Hoven in Landsberg, for shortening the proceedings, it would be alright, if they were heard in Landsberg.

The examination of Speer is still being considered on the basis of what he said in the Flick trial. If it is not necessary to hear him, we shall waive him altogether or perhaps the interrogation commissar in Berlin would be in order.

These are all of the names mentioned by Mr. Dubois yesterday.

I have one further question, Mr. President. May I touch upon that right away? This is a fundamental question and deals with the following problem. We have a number of affidavits sworn out by defendants. They could be taken as statements which incriminate other defendants. There are two questions arising from this state of affairs for the defense.

First, in regard to these affidavits which incriminate other defendants, do the defendants have to be called for cross-examination by the end of Prosecution's case, or,

Second, can cross-examination of the defendants, in regard to those affidavits which incriminate other defendants, be postponed up to the time when they are examined by their Defense counsel in the witness box?

I ask this question for all Defense counsel so that we should not forfeit our right for cross-examination because we did not have it at the proper time.

MR. SPRECHER: Insofar as your Honor may want the position of the Prosecution on the last point, we have no desire to take any position concerning any requirements of cross-examination, or if the defendant does wish to take the stand at any time in the trial that he should have to do it now, so that the other defendants could cross-examine him.

THE PRESIDENT: Now with respect to the two matters mentioned by Dr. Goettcher, on behalf of all Defense counsel, first in regard to the cross-examination of the witnesses proper, on behalf of the Tribunal, I should like to say to Counsel for the Defense, and for the record, that the Tribunal is very much concerned that its position shall not be misunderstood. We have interested ourselves in obtaining commitments which would indicate as to whether or not certain witnesses who have made affidavits should or should not be produced for cross-examination.

In order to have a proper control of the progress of the case, and an orderly procedure, we have felt it necessary to press you somewhat for commitments on those lines. There is no disposition on the part of the Tribunal whatsoever, to limit or restrict what we regard as a right to cross-examine witnesses who have been produced against your clients, whether in person or by affidavit. Please understand that, and with that understanding we wish to express our appreciation for the fine spirit of cooperation between counsel for the Prosecution and the Defense in helping us to have some advance notice as to whether or not there was or was not to be cross-examination of these witnesses. That is the concern now of the Tribunal, and not a matter of putting any pressure upon you to waive something that you consider a substantial right.

As to the second proposition, with reference to the affidavits of the defendants, that may or may not incriminate other defendants, that is a matter in which the President of the Tribunal would be reluctant to express an opinion without a Conference with all of the members of the Tribunal. It is a matter, however, with respect to which you are entitled to know the position of the Tribunal. We shall give consideration to that, and that may well fit into another matter in which the Tribunal is concerned.

It is now apparent that we are not far from the close of the Prosecution's case in chief. The next order of business will be the matter of opening statements and then the receiving of the evidence of

the Defense. The Tribunal is concerned about working out with counsel for the Defense, and in cooperation with the Prosecution, insofar as their right of cross-examination is concerned, an orderly procedure so that we know when we start in to receive the evidence of the defendants, what it is calculated to apply to, and have some orderly system with reference to the presentation of the defense.

We should like, Dr. Boettcher, at some convenient time very soon, to have you select from the staff of Defense counsel, a Committee of 4 or 5, whatever you deem necessary, with reasonable limitations, to sit in in conference with the Tribunal and discuss with us your plan of defense, not as to proof or substance, but as to procedure.

We should like to have representation of the Prosecution at the Conference so if you will give some thought to the selection of a personnel from your group, we will arrange an informal conference just as soon as possible, and at that time, I am hopeful that we can answer your second question so that you will know what the situation is with respect to the affidavits of the defendants.--

If there is nothing further, is the Prosecution ready to proceed?

MR. AMCHAN: If the Court please, I understand the witness Struss is being cross-examined by the Defense.

THE PRESIDENT: The Defense may continue with the cross-examination.

CROSS EXAMINATION (continued)

DR. STRUSS

BY DEFENDANT MR. AMCHAN:

Q Witness, yesterday we dealt with the Exhibits 612 and 613, in the English Document book 34, on page 115 and 116; German page 120 and 121.

Witness, we spoke about nitrogen products yesterday, and about the numbers you mentioned in your chart. Do you remember that the sale of nitrogen was divided into two groups?

A Yes.

Q What groups were they?

A That was for fertilizer, and technical nitrogen.

Q Is it true that during normal peace-times about 80 per cent of nitrogen production was used for fertilizer, and 20 per cent approximately was used for technical purposes for Farben?

A The numbers are even less for technical nitrogen. I have the total sale of the nitrogen syndicates before me for the years '38 and '39. 843,000 tons of nitrogen for the fertilizer, and 81,000 tons of technical nitrogen. In my calculations that is about 10 per cent for technical nitrogen.

Q May the difference be explained from the fact that the conditions with Farben were a little different from conditions in other nitrogen syndicates?

A That is possible. This is the entire nitrogen syndicate.

Q What products do you include for technical nitrogen?

A I include nitric acid both in its diluted form and in its concentrated form, sodium nitrit, and I believe also urea was also included for technical nitrogen.

Q Isn't it true that urea was used for fertilizer and that those amounts have been included as fertilizer and that they are also the starting materials for synthetic lines, for other synthetic products, and that therefore they might be included as technical nitrogen?

A That is true. That is why I was not quite clear. A large amount of urea went into synthetics, and also into artificial glues, and they are all on the technical part.

Q Would you not also include ammonium chloride, liquid ammonia for freezing machines, to be included in the technical nitrogen?

A Yes, they are also included in the amount for technical nitrogen.

Q A short while ago you mentioned nitric acid. That is the concentrated nitric acid; is it correct that this product served for normal peacetime production such as dyes, pharmaceuticals, celluloid films, and lacquers, and blasting material for mines, and gunpowder

(Jagdpulver)?

A Yes.

Q Witness, if I look at your chart, that is MI-10008, then I can see under explosives and gunpowder for 1939, a production of approximately 80,000 tons. Can you tell me how much nitrogen in the form of nitric acid was used for the production of this 80,000 tons.

A I estimate that about 15 to 20 per cent are contained, but I have no exact quota on that. It is by no means higher.

Q In the case of this highest figure, 20 per cent, would it be correct that these amounts of 80,000 tons of explosives and gunpowder which were produced in '39, only about 16,000 tons of nitric acid was used for their production?

A Certainly, and perhaps even less.

Q Is it true that these 16,000 tons which you have already mentioned as a high figure, constitutes practically 3 per cent of the nitrogen amount produced in the same year by Farben's 554,000 tons?

A Yes.

Q Your Honor, may I point out an error in the translation that was pointed out to me? I had mentioned "Jagdpulver" and that was translated as "gunpowder". "Jagdpulver" is powder for hunting purposes.

I now turn to the figures about synthetic fuels.

Dr. Struss, do you know how large the German consumption of liquid fuel, that is gasoline, diesel lubricants was, in the years 1938-39 before the beginning of the war?

A I believe that I can remember as of during 1936 and 1937, approximately one and one-half million tons were consumed, but I am not quite sure whether that figure is correct.

Q Maybe you confuse these with the figures from plants of synthetic fuels. Isn't it true that German, around that time, imported mineral oils and produced mineral oils themselves, and also produced synthetic amounts, and from all of these sources they consumed about 7 to 8 million tons of liquid fuels altogether in a year?

A I do not know this figure.

Q Do you know how large the consumption of rubber was in the years before the war began, let's say '38?

A Yes, it was approximately 100,000 tons.

Q Then it is true then that the production of synthetic rubber in 1939, which is indicated here on the chart as 22,000 tons, constitutes less than one-quarter of the total German peacetime consumption?

A That's correct.

Q. Did this amount of 22,000 tons cover the needs of the requirements that arose after the war had broken out?

A. No, these requirements were estimated much higher at a later time and I remember that the latest estimates that were made by the Reich office, that probably was around 1942 or 1943, these estimates were somewhat around 173,000 tons.

Q. If I base my observations on those production figures which refer to the capacities of the two plants which were under construction when the war broke out and those were Schkopau and Huelo. Schkopau was almost completed then, but Huelo was still under construction and didn't produce yet. Is it true that these two plants had been erected for a capacity of 50,000 to 60,000 tons together for both of them?

A. Yes, that was the first project. It was extended later.

Q. But this intended project was what we had at the beginning of the war, is that right?

A. Yes. At the end of 1939 these figures were planned.

Q. In regard to sulphuric acid, witness, you agree with me that sulphuric acid is one of the most common chemical products and serves for an unlimited number of purposes?

A. Yes, that is correct.

Q. Is it true if I say that in every country where chemical industry produces anything, the first thing they build is a sulphuric acid plant?

A. That's correct, too. Next to soda, it's one of the most fundamental industries in the chemical industry.

Q. Is it true that sulphuric acid is used, among other things, for the following purposes? May I enumerate them and then you can answer my question? It's used for hyperphosphate and ammonium phosphate for fertilizer?

A. Yes.

Q. Is it used for artificial silk and artificial fibers?

MR. ARCHER: If Your Honors please, I think we covered the use of the particular product when the defendant Ter Meer cross examined our witness Elias and I think this is repetitions.

THE PRESIDENT: Because the defendant has cross examined another witness is not a restriction on the possible cross examination of this witness.

The objection is overruled.

BY THE DEFENDANT TER MEER:

Q. Is sulphuric acid also used to a large extent for the production of dyes, intermediates for dyes, and pharmaceuticals?

A. Yes, This amount is a little smaller, but, at any rate, in Germany it amounted to 6%.

Q. Is it used outside of the chemical industry, for instance, accumulators and transformers to refine oils, etc.?

A. Yes. Refining of petroleum and metal etching is not unimportant. About 3% in the peace time production.

Q. In comparison with all the purposes mentioned, does the use of sulphuric acid play a part in the production of gun powder and explosives, and is that part played comparable to the peace time purposes?

A. The entire consumption of explosives in 1938 and 1939 was 9% of all sulphuric acids produced.

Q. Is sulphuric acid not reused for the production of gun powder and explosives?

A. Yes, part of it is reused again. I think the 9% I mentioned already contained some of the amounts that were reused, but this does not only include explosives for war purposes, but also explosives for mine blasting.

Q. Witness, since you have a statistical document in front of you, is it true that the largest consumers of sulphuric acid in 1938 were the plants producing artificial silk and artificial fibers?

A. Yes, artificial fibers, about 25%; agricultural production, about 18%; and hyper phosphate, about 16%.

Q. Is it true that the large increase of consumption of sulphuric acid and caustic soda in Germany in the middle of the 30's was caused predominately by the extension in the production of artificial fibers?

A. I know no exact figures from documents, but you are certainly correct because hyper phosphate and nitrogen production was not increased essentially during that time and, therefore, the main increase would have to be explained from cellulose.

Q. Do you remember, witness, that in 1938, the production of artificial fibers in Germany had reached approximately 160,000 tons?

A. I don't remember that figure precisely, but I believe you are approximating it correctly.

Q. Witness, on reading through this list of 18 chemical products, I should like to ask you whether you are not of the opinion that a number of chemical products are consolidated in this list which are of an extremely heterogeneous nature?

A. Yes, that is, as a matter of course, certainly the case.

Q. Are you the author of this list?

A. No, Twenty products were submitted to me, from which soda was eliminated because Farben didn't produce it. I do not know what happened to the other product. That is, only 18 were incorporated.

Q. We turn to book 34, Exhibit 615, the English book on page 125, the German book on page 229. This is document HI 10595. In this chart, Mr. Witness, you fix the production of Farben for twenty-nine products and compare it with the entire German production. Do you have that chart?

A. Yes.

Q. May I ask you how you determined the German production figures? You certainly didn't know the production figures of our competitive firms.

A. This work was drafted in 1945 for a certain Mr. Ritchly and comprised much more than forty products. From them, the products not on the list were selected and submitted to me. The figures for all of Germany were computed partly with the help of our merchants - the leading merchants of Farben; but, of course, they constitute only estimates as stated by me quite explicitly, and, in a few cases, only very rough estimates could be arrived at. Besides that, I asked all technical experts whom I could get hold of for their opinion and, as a result, I prepared this list with extreme care.

Q. Dr. Struss, didn't you mention, when we treated this subject matter in Frankfurt, that since the time when you propounded this list in 1945, you had not occasion to examine or investigate these figures any more closely?

A. No, I couldn't make new investigations because I didn't have the time. If I wanted to reinvestigate, I would have had to take a few weeks which I didn't have. I didn't have that time.

Q. Dr. Struss, in the heading of this list you mentioned the dependency of the army upon the production of Farben in 1943. You don't want to say by that that the Wehrmacht used alone all of Farben's production in 1943?

A. No. That's not true. We know that in 1943 nitrogen, for its predominant part, was still used for fertilizer.

Q. Then you agree with me that there were other consumers - for instance, the Reichsbahn, the post office, the hospitals and civilian population - who used a certain amount of chemical products, even if they were somewhat reduced?

A. Yes, but that, of course, does not change anything from the fact that in the case of Buna, where my numbers are certainly correct, the entire Buna production was executed by Farben.

Q. I asked for the place where the production went to, not where they came from.

A. Yes.

Q. Mr. President, may I ask one question? Dr. Struss and myself had, when discussing at Frankfurt this list, not time enough to reestablish, on the basis of complete records, the figures, as Mr. Struss pointed out just now. Therefore, in this list are contained a number of errors which I would now like to deal with in this cross examination. Am I allowed to ask Mr. Struss whether he would find it correct that for certain figures or certain positions there should be put in a question mark so that would deal with the matter in a very short time?

THE PRESIDENT: That's entirely proper.

BY DEFENDANT THE MEER:

Q. Did you understand, Dr. Struss?

A. Yes.

Q. Dr. Struss, is it correct that when we discussed these matters in Frankfurt we talked about the production and the share of Farben in nitrogen and that we could not get to a clear picture for 1943?

A. Yes, that is true for nitrogen.

Q. Then we can place a question mark next to nitrogen?

A. Yes.

Q. Is it true that in regard to synthetic fuel and synthetic lubricants we could not determine the exact figures and that I assumed that your figures contain mistakes?

A. Yes, that is correct.

Q. Then we may place a question mark next to those two products, as well?

Is it true that I pointed out the error to you which occurred in regard to Farben's share in the chemical warfare agents production in this chart and which you listed as 95%?

A. Yes, I heard that a clarification by official documents has been undertaken in the meantime.

Q. Dr. Struss, may I ask you how the extremely high figure of organic intermediates, which mention Farben's share as 1,500,000 tons in 1943, was arrived at? How you computed that figure?

A. I am not prepared for that question and I don't have my documents with me. Therefore, I cannot answer that question now. It is impossible, however, that a certain amount of duplications arose from the fact that initial products, intermediate products and end products were computed twice.

Q. You will admit that it's surprising if organic intermediates are higher than nitrogen, for instance?

A. I can give you exact information about this question if I have my documents.

Q. Dr. Struss, is it correct that when discussing matters in Frankfurt, we questioned Farben's share in German pharmaceutical production and that I pointed out to you that 55%, mentioned by you, was too high?

A. Yes.

Q. Then we can put a question mark behind that figure, as well? Is it also true, Dr. Struss, that I pointed out to you that the amounts listed for cellulose wool, that is, for artificial fibers and artificial

sild, were not figures from 1943, but that they were the figures from the year 1938?

A. Yes, that is correct. The later figures were not available.

Q. Then we can turn from this affidavit.

We now turn to Book 36, Exhibit 653, on page 39 of the German and page 100 of the English.

Your Honors, I waive cross examination, but should like to point out that in this exhibit the same mistakes occur which occurred in the previous exhibit and which were marked by a question mark in the previous case.

THE PRESIDENT: Perhaps for the record, instead of letting it stand on your statement to that effect, you had better verify that by the witness as to whether that situation does exist.

DEFENDANT TER MEER: Thank you.

MR. ALTMAN: Your Honors, we'll concede, on the present state of record, that there are questions with respect to this thing, but not mistakes.

THE PRESIDENT: Well, perhaps we can save some time. Are you willing to concede that as to the exhibit now under inquiry, the same questions exist as with respect to the preceding one?

MR. ALTMAN: We'll concede that.

THE PRESIDENT: Very well, that would seem to suffice.

DEFENDANT TER MEER: I also waive cross examination about the affidavit, Exhibit 706, in Book 37 on page 21 in the English and page 25 in the German because the mistakes contained therein have also been marked by the previous affidavit.

I have no further questions.

THE PRESIDENT: Very well. Now, is there any further cross examination of this witness desired?

BY DR. MEYER (for defendant Gajewski):

Q. Dr. Struss, in connection with your chart of the eighteen important products in Exhibit 613, 613 and the chart which is 614, Book 34, I have a question in regard to explosives.

In the figures mentioned by you, there is a certain discrepancy with the documents I have, especially for the years 1941, 1942 and 1943. In 1943, there is a discrepancy of about 29,000 tons more according to your chart than according to our charts. May I ask you that perhaps the difference may be explained because the dinitrobenzene which was produced in Leverkusen and other plants was included by you?

A. Yes, dinitrobenzene is filled directly into shells. Even if it is not generally regarded as an explosive and is an important intermediate for dyes during peace time.

Q. Do you know perhaps that, according to authoritative safety regulations of the railroad, dinitrobenzene is not regarded as an explosive?

A. That's true because, during peace time, it is shipped in any amounts without any limitations or restrictions.

Q. May I ask you further, whether the civilian explosives are also included which were produced by DAG in large amounts?

A. I received these figures from Dynamit A. G. in toto, but it is certain that all explosives are listed and, therefore, those used also for mine blasting and other civilian purposes.

Q. This is not immediately war material?

A. No.

Q. Do you have any ideas about the proportion of production in civilian and military explosives of the Dynamit Nobel A. G.?

A. No.

Q. Do you have any ideas about the proportion of production in civilian and military explosives of the Dynamit Nobel A. G.?

A. No, I have no exact idea, but it is certain that during peace time, the mine blasting explosives constituted a larger part of this

figure.

Q. Would you agree with me when I say that the proportion in 1943 was approximately 16,000 tons to 45,000 tons?

A. I cannot say anything about it since I have no knowledge of your figures.

Q. Thank you.

Would not also have to be taken into account these figures that in trinitrotoluene a certain amount of it was used for civilian purposes?

A. If you undertake a sub-division for civilian and wartime purposes, then, of course, you have to do that.

Q. That would decrease the amount by a certain figure?

A. Yes.

Q. May I ask you whether nitro-cellulose, in its powdered form, can be included? I have misgivings about that because if you include nitro-cellulose in your list, you might duplicate your list since it is again listed in the case of powder.

A. I don't think that was done in this list because it comes from the bookkeeping department of the Dynamit Nobel AG, and I think these figures are already cleared without any duplications.

Q. There is no duplication in this case?

A. I believe not.

Q. In the title, you say that these figures are the production figures of Farben and those enterprises controlled by Farben. That is correct, is it?

A. Yes.

Q. You computed your figures from those obtained from DAG and from Verwertchemie?

A. Yes.

Q. If I remember correctly, during your first cross examination it was discussed whether investments in the case of construction of Reich-owned plants were submitted to the TEA or not, and I think you said

they were not submitted.

A. In the case of Verwertchemie, no appropriations were ever submitted to TEA.

Q. Did the production figures come to your knowledge in the TEA?

A. No, we never knew about them.

Q In connection with Document 10010, Exhibit 615, in Book 34, on page 229 of the German, and Document 10009, Exhibit 568, in Book 36, on page 139, may I ask you the following. On the basis of the aspects discussed by us just now, if the figures were changed on these aspects, would then the proportion of DAG in the entire German production change and therefore can the dependency of the Wehrmacht --

MR. SPRECHER: May I ask counsel whether or not in his opinion these were not supposed to have been covered by the prior cross examination and now concerning documents which are not subject to cross examination?

THE PRESIDENT: What is your position?

DR. MEYER: As far as I know those two exhibits are subject of the cross examination and were already cross examined about by Dr. ter Meer.

MR. SPRECHER: That is correct. I was just asking the question.

Q Would you please answer my question?

A Yes. I don't know exactly what you mean by your question. Do you speak about that small change which arises from the fact that for the last four years that di-nitrobenzol production is taken out from the entire production figures?

Q Yes, that is what I mean; but I also mean taking out civilian explosives and also taking into account the Verwertchemie figures which Farben didn't know anything about. Would then another picture arise?

A That is certainly true. If the figures of the Farben are taken out then of course you arrive at a completely different picture.

Q Thank you. May I ask you, in conclusion, according to what aspects you subdivided explosives and powder in your last chart. You yourself say in the affidavit that it was an estimate.

A Yes. But nevertheless I don't know what figures you are speaking about now.

Q The figures for explosives and gunpowder. You have given a total figure and in the last two affidavits you listed them separately. I'd like to know why and according to what aspects this separation was carried out.

A I don't have the document before me.

Q May I give it to you. That is for the year 1943, because the last two affidavits of yours refer to 1943.

A This estimate was based on the quota which were made known to us by documents of the Dynamit Nobel, A.G.

DR. MEYER: Thank you very much. I have no further questions.

THE PRESIDENT: Any further cross examination?

DR. THEOBALD (for Dr. Buerger): I have only very few questions.

Mr. Witness, in Exhibit 658, NI-10009, which is explained by you in Exhibit 706, you also speak about the chlorine production in 1937 and 1943 and you also speak about a chart and a graph in Exhibit 612 and 614 in Book 34, about the production of eighteen important products, among which you list chlorine as well. The figures from the latter exhibit, which extend over the years 1932 to 1945, are again mentioned in the affidavit which extends from 1937 to 1943. However, in your explanation, there are certain differences because in the affidavit about the production because you speak in it about the production of all the years involved, 1933 to 1945--no, excuse me, I made a mistake. You speak about 1937 and 1943 and you say that Burghausen and Mueckenberg were included by you but in the affidavits you speak about you do not speak about these factories. Of course, it is difficult to manipulate with all these affidavits but perhaps if you find them you might be able to explain what I mean. What are these factories, Burghausen and Mueckenberg?

A Burghausen and Mueckenberg are the two plants from Wacker-Chemie which had a five per cent share in Farben's stock.

Q In one exhibit, 706, that is in Book 37, on page 25, you say something about chlorine. You say they all participated with one hundred per cent. Burghausen and Mueckenberg. Do you still consider that correct?

A I believe the question whether Burghausen and Mueckenberg should be included and counted to Farben cannot be decided by me. I merely want to say what I always stated previously--that we had no technical influence on Burghausen at all.

Q Would you please look at the next page of that same affidavit. That is book 37, page 29 of the German. You say in that chart in the case of the other solvents for Wacker you computed Farben's share only as five per cent -- fifty per cent, correction. Is it correct that in the case of chlorine the same should be done?

A That is true. I must admit that it certainly isn't correct if in one case you take fifty per cent, in one case, then in other cases, for clearness fifty per cent would have to be assumed as well.

Q However, whether production of figures which gibe in all the affidavits are changed for the years 1933 to 1945 or 1937 to 1943, you cannot tell me?

A I cannot tell you now whether that changes anything.

Q I was only interested in having Farben's share fixed only as to the amount in which they actually participated. In Exhibit 693, which is document NI-10011, in Book 32, German page 78, you speak about investments, speak about a lost subsidy of the Reich in the case of Moosbierbaum which amounted to three million Reichsmarks.

Do you know whether this subsidy was ever paid?

A No, this subsidy was never paid because I know the figures by heart by chance. For the magnesium factory in Moosbierbaum we expended only forty-two millions up to the end of the war, but the plan of expenditure was far over one hundred million.

Q Yes, and that takes care of the question in regard to 695, which is Document 10022 in Book 32, German page 82, where you say that the Bank der Deutschen Luftfahrt granted a credit to Farben for Moosbierbaum amounting to sixty-five million Reichsmarks --

MR. AMCHAN: Excuse me if I merely say that the stipulation is running away from us. You are going into documents not covered by the stipulation, and I understood the purpose of the stipulation was to demonstrate what counsel would cover.

THE PRESIDENT: That point is well taken. Counsel is getting out of the field of proper cross examination.

DR. THEOBALD: May I ask for the translation once more? May I be excused, Mr. President. I did not know that any stipulation had been arrived at for this document.

THE PRESIDENT: Very well.

Q One last question, Mr. Witness. During your previous examination an exhibit was dealt with, an affidavit in which you say something about stabilizers. In the record of 9 October 1947, in the afternoon session, the defense counsel for Dr. Buergin reserved the right for himself to ask once more a question about this affidavit. That is on the German page 1907 of the record. You had given an additional affidavit, NI-11409, which was added to Book 34 and I only want to ask the following in this connection. The production figures of stabilizers were computed for 1936 and 1938 and listed by you as 4.8 thousand tons and in another affidavit, NI-4832, Exhibit 744, you said that in these same three years about five thousand tons were stored. May I ask you how this contradiction may be explained?

A This may be explained because when I made the estimates about the storing away of five thousand tons I didn't know exactly what the production figures were. The production figures, as you can see from my later affidavit, were determined by me only during the course of this year, on hand of the files. The last production figures mentioned by me are official production figures of Farben and that of course makes my old testimony obsolete because no five thousand tons could have been stored.

Q Yes. One last question in regard to affidavits, Exhibit 688, in Book 32, on page 61, German page 61. You make statements about the investments and about what you included and what you did not include. In the case of magnesium in Bitterfeld, Aken, and Stassfurt, may I ask you whether you had any, whether you thought of any particular subsidiary plants which you included in your figures so that they arrived at what they are listed at?

A No. I considered these figures as extremely high and I am presently rechecking them in Frankfurt once more. But I don't have a proper expert in this field. I haven't got such a man yet. Please wait. Maybe I shall be able to find out a different calculation method.

Q I may say, then, that you perhaps are of the opinion that your figures are not the final result?

A I think that an error may have occurred in my office. It is not very easy to determine these figures.

DR. TEOBALD: Thank you very much. I have no further questions.

THE PRESIDENT: Any further cross examination? Any redirect?

REDIRECT EXAMINATION

BY MR. AMOEHAN:

Q Dr. Struss, I understood that in response to a series of questions from Dr. Ter Meer you indicated that the investment program and all the other activities of I.G. Farben had as their decisive factor the economics of the situation. Did I understand you correctly?

A I am not sure of what period of time you are speaking.

Q Did Dr. Ter Meer put to you questions to which you responded to the effect that the economic considerations were

the decisive considerations for Farben with respect to investments and productions. Is that correct?

A Yes, that is correct, as far as we were not forced by government agencies to handle things differently.

Q Did any political considerations enter into the picture?

A May I ask you to repeat your question once more?

Q Did any political considerations enter into the picture regarding I.G. Farben's activity from the year 1932 through 1939?

A Undoubtedly that was true in the case of stabilizers, in the case of magnesium, if you consider the influence of government agencies as a political influence. I had not expressed it in this way and I wasn't customarily expressing it in this manner.

Q Would you say, Dr. Struss, that with respect to I.G. Farben's investment program political considerations entered into the picture?

A Political considerations because government agencies caused us to extend our projects and they entered into the picture. In the both cases mentioned by me it is possible that perhaps in a smaller manner, but I cannot remember at the moment what that was. And then later of course, when the four year plan began, demands of military men and of agencies were made to us which certainly exceeded our desires for investments and our desires of any new construction.

Q I hand you, Dr. Struss, this document, which is identified as NI-11, 106, and ask you to please look at it. We'll have that marked for identification Prosecution 1571.

A This document is signed by Dr. Eckell, an associate of Professor Krauch in the Reich Office for Economic

Development. It is a record of a meeting in which Dr. Ter Meer, Dr. Ambros, and I myself participated for Farben, amongst other people.

Q. What date is that meeting?

A. The date is 14 April 1939.

Q. Dr. Struss, do you recall whether the date of that meeting was immediately after Germany took over and invaded Czechoslovakia, particularly Moravia and Bohemia? Was that meeting immediately thereafter?

A. Yes, that must have been one or two months later.

Q. Will you please turn to page 2 of that document --

A. Yes.

Q. -- and first let me ask you, Doctor Struss, are your initials on that photostat? Turn to the first page, please.

A. Yes, on the first page there are my initials which means that I read these minutes and it can also be seen that I participated in this meeting.

MR. AICHAN: I think the witness is entitled to --

MR. SPRECHER: Mr. President, I beg your pardon. I believe I took the liberty of instructing the defense counsel to go to the witness so that they could see the document too.

THE PRESIDENT: That is very well. They are entitled to see it.

DR. BURNDT: Mr. President, Mr. Aichan tells me that he wants to ask no further questions on the basis of this record--

MR. AICHAN: I am sorry, we misunderstood each other completely. I shouldn't try to speak German. I understood him to ask if I had an extra copy and I said no.

THE PRESIDENT: Evidently a mistake in translation.

DR. BURNDT: I merely wanted to ask for permission to show these minutes briefly to Dr. Ter Meer so that he can

glance over them.

THE PRESIDENT: Does the prosecution desire that the document be in the hands of the witness during the continuance of the cross examination?

MR. ANCHAN: Yes, I do.

THE PRESIDENT: Well, will you please pass it to the witness, Doctor, and we'll see that it gets into your hands and that you have the opportunity to discuss it with your client before you determine whether you want to cross examine further into it. Let me suggest to counsel for the prosecution that if you can in the next four minutes develop something along that line then counsel could have it during the recess and we would all save time that way.

Q Now, Dr. Struss, beginning with the subject heading "Schkopau," will you please read the paragraphs going over to page 2.

A Yes.

DR. DILL: One moment, please. Doctor, may I suggest that the witness quotes those paragraphs to us so that we know what paragraphs are concerned and it will not be necessary to read the whole record.

THE PRESIDENT: The Tribunal will at this time prepare to rise for its morning recess. May we suggest that when we come back counsel for the prosecution be in a position to state to the Tribunal the purpose of the examination. We do not know whether this is an omitted matter on direct examination, or whether it relates to something that was brought up by cross examination. So tell us that when we come back. In the meantime, can you afford counsel for the defense a chance to look it over?

MR. ANCHAN: I can tell you the purpose right now, if you will permit me to.

THE PRESIDENT: Go ahead.

MR. AMCHAM: As the witness indicated, it is a record of a conference in April 1939 and what I want to point out is that by the minutes of that conference, where Ter Meer and the witness were present, there is a reference that for political reasons they are going to do something with the Buna Plant at Schkopau. If Your Honors please, I submit, in view of the matters brought out on cross examination by Ter Meer that the only questions are economic, I think it is proper redirect.

THE PRESIDENT: Very well, then. Will you see that counsel for the defense have an opportunity to examine the document during the recess? We will now rise.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. BOUTTCHER: Your Honor, one brief remark: in order to shorten cross examinations I waive on behalf of all defense counsel the cross examination of the witness Kogon.

THE PRESIDENT: Thank you, doctor.

DR. ERNST STRUSS (resumed)

REDIRECT EXAMINATION (continued)

BY DR. AMCHAN:

Q Dr. Struss, have you that document before you?

A Yes.

Q Would you please read the first paragraph beginning with the subject matter Schkopau for the record, please?

A "With reference to the further expansion of the plant at Schkopau it is stated that the original suggestion of the I.G. was to expand according to the Reppe procedure. In view of the fact that the Reppe process is only being employed and is only being surveyed today to a relatively small extent and in view of the fact that intermediate steps would have to be tested first of all, the I.G. deems the risk to be too large at the moment. They don't think they are able to maintain that suggestion. It has to be considered that the dates for construction have to be kept up by the I.G. Since, however, these dead-lines cannot be --

Q One moment, please. The translation isn't coming through.

A "Since, however, these dead-lines must be kept up and since it has to be considered --"

Q I am sorry. Would you please -- the translation isn't coming through, if your Honors please. Would you please begin "since, however, these dead-lines"?

THE PRESIDENT: And, doctor, read very slowly and pause between sentences and give the translator an opportunity to

catch up with you.

BY MR. ALCHAN:

Q Please begin with the sentence beginning "since, however, these dead-lines cannot be modified", on page 2:

A "Since, however, for political reasons these dead-lines cannot be modified as it has been emphasized again by the Reich Agencies and since Ter Meer also represents this viewpoint, the gentlemen of the I.G. are maintaining their suggestion to continue the expansion by way of a four-stages process; this is the only suggestion to be justified up from a technical viewpoint."

Q Now, Dr. Struss, you were present in that meeting; is that correct?

A Yes.

Q That was the political reason with which Dr. ter Meer agreed with respect to not modifying the plans for enlarging the Buna plant?

A It's correct that I attended that meeting and I can also see from my initials that I read the record. In spite of that, however, to my regret I cannot give you any clarification as to the political reasons which moved him. To the best of my will I cannot remember what was meant by it.

Q Will you please turn to page 4, and do you note there a sentence to the effect in the final conference with Dr. Krauch on 6 April he too agrees with this suggestion? Do you see that sentence?

A Yes.

Q And does that refer to the fact that Dr. Krauch also agrees for political considerations not to enlarge or modify the plants of Buna?

A No, that's not stated expressly in the sentence but

I believe that you cannot understand it differently. Prof. Krauch was Dr. Eckell's superior; it can be assumed for certain that Dr. Eckell was the author of the minutes and that he functioned in this meeting as a Chairman.

DR. DIX: I just wanted to request that this part of the document is quoted into the record too. Otherwise, one is not able to understand the examination.

A The sentence reads: "During a meeting on 6 April which took place in Dr. Krauch's office it became evident that he too agrees with the suggestion." I should like to point out, however, that in this copy before me there must be a mistake because at the beginning of the document you find the 14th of April as the date of the meeting and on page 4, however, you will read "on the final meeting which had taken place on 6 April." Perhaps it is immaterial but it is impossible that that final conversation had taken place before the time this record was made.

Q Now, please look at the first page of that document, Dr. Struss? Do you note the note on the right-hand side on top is 14 April 1939, the date when these minutes were written?

A Yes, that's quite possible.

Q And in the middle of the first page does it show that the date of the conference was April 4, 1939?

A I beg your pardon; I have overlooked that.

Q By the way, Dr. Struss, what's the production capacity of Schkopau as shown by that document?

A 60,000 tons. I can estimate that as a result of the difference with respect to 100,000 tons just mentioned on the first page and 40,000 tons which you will find on page

Q Does that document indicate that Dr. Ter Meer and Dr. Ambros report that at the outset on the state of I.G. is consideration in regard to the further enlargement of the Buna plant of Schkopau and Huels to 100,000 tons Buna? Does that appear on the first page of the document?

A Yes. That document shows that the planning had already been determined in April of 1939.

Q 100,000 tons?

A Yes.

Q That is as to those two plants only?

A Yes, only referring to these two plants. A further capacity was not available at that time apart from the small experimental products which could have been produced at Leverkusen.

Q Now, Dr. Struss, I understand that in the cross examination by by ter Meer he asked you something about the eighteen products that were listed in those various charts. I hand you a copy of an interrogation which I took of you with respect to that, and I ask you whether the following questions were put to you, and did you make the following answers?

THE PRESIDENT: Now, Mr. Prosecutor.....

MR. AMCHAN: It is very short, if your Honor please.

THE PRESIDENT: It is not a question of shortness. It is a question of procedure here. What are you undertaking to do? This is your witness. Are you going to try to cross examine him now?

MR. AMCHAN: I thought it appeared to Counsel that since we are not bound by technical rules the substance of his testimony explaining the purpose could be easier established by just reading that interrogation. It does not impeach. It is explanatory, and I could, of course, proceed to ask him these questions anew, but since your Honors are not bound by technical rules, having canvassed this field with the witness before, it occurs to us that in the interest of expedition we could just refer to that and get that into the record, and it would clear up that point.

THE PRESIDENT: Well, this conclusion that the Tribunal is not bound by technical rules is not all comprehensive or we would find ourselves without any rules here, and it would be a matter of a free-for-all concerned. Counsel understands that so far as the presiding officer is concerned this is not a precedent that will in any way embarrass the exercise of his functions as a presiding officer of this Tribunal; and there is no objection of Defense Counsel. You may answer your question with those clear indications.

DR. BOETTCHER: There is an objection on the part of Defense Counsel. I would request to adhere to the usual forms of questioning.

THE PRESIDENT: I think we had better do that because what you are about to do is a two-edged sword of which you make yourself by urging on us to get back onto some fundamental principles sooner or later. Perhaps you had just better ask your questions and let the witness answer and not cross examine your own witness.

BY MR. ALCHAN:

Q Dr. Struss, when you prepared these charts and signed the affidavit, NI-10008, what did you understand the purpose to be for which you were compiling that list?

A I had to assume that it was to contain the most important products of the chemical industry.

MR. ALCHAN: I can't hear the translation.

THE PRESIDENT: Just a moment.

DR. BOETTCHER: Couldn't you ask the witness to hand back the written statements which were handed over to him before?

MR. ALCHAN: We are having mechanical difficulty, your Honor.

THE PRESIDENT: Just a moment. If we are having some mechanical difficulty, we are not on the record for the moment until we see that the sound system is functioning.

DR. BOETTCHER: May I repeat my question. I asked that the written notes which were handed to the witness be handed back by him to the Prosecution.

THE PRESIDENT: That is a matter that the Tribunal will not interfere with at this time. It would only be in case of an abuse of some kind or the basis of an improper inference that we would control what the witness has in his hand. That objection will be overruled. When you go to cross examine him, Doctor, you may inquire as to any significance from the fact that he had a paper in his hand and ask him what it was, if you wish to. Proceed Mr. Prosecutor.

MR. AMCHAN: I didn't get the last answer over the translation.
Would you mind --

THE PRESIDENT: Perhaps you had better just ask the question again.
It may not be on the record.

BY MR. AMCHAN:

Q Dr. Struss, what did you understand you were compiling the lists for?

A It is hardly possible for me to say that I personally had a purpose in mind in compiling that list since these lists were, after all, submitted to me. I assume, however, that they were to contain the most important products of chemistry, participating the most important products especially with respect to war.

Q And what did you mean by "most important in respect to war?" Do you include within that term "most important in war" important for waging war?

A Yes, certainly.

Q Now with respect to poison gas, Dr. ter Meer asked you whether you heard or knew that experts testified contrary to your estimates. Did you read the testimony of those experts which, as Dr. ter Meer indicated, had contrary estimates to yours?

A As far as I know, I only read that Dr. Ehmann had testified here that he had exact bases with reference to the production of chemical warfare agents. As far as I recall, no other testimonies have come to my attention.

Q Did you read Dr. Ehmann's testimony?

A Yes, I read it.

Q How did you compute the percentage capacity and production for Farbon in connection with poison gas? You did not know, as I understand it, the actual production; is that right?

A No, I was not informed about any production figure at all and I have always pointed out that fact.

DR. GIERLICH: Your Honor, I ask you to consider the last question as being inadmissible and to strike it from the record. In my opinion, the Prosecution has no right to put such questions, but to ask directly.

THE PRESIDENT: Well, that objection should be overruled. The Prosecution does have a right to interrogate this witness as to any matter that was developed on his cross examination. As the Chair remembers his testimony, this question does relate to matters that were brought out in Dr. ter Meer's cross examination of this witness.

DR. GIERLICH: I beg your pardon, your Honor. I believe I was misunderstood. I didn't attack the question as to its content but the form that the question was put. It was a leading question which was put by the member of the Prosecution to the witness, and as far as I am informed about Anglo-Saxon procedure, that is not proper in the case of one's own witness.

THE PRESIDENT: I think there is something to the objection, Counsel.

MR. AMCHAN: I will take it and rephrase it.

THE PRESIDENT: All right.

BY MR. AMCHAN:

Q Did you know the actual production of poison gas, the figures?

A No.

Q How did you estimate production for poison gas?

A I made my estimates on the basis of the documents which were available to me with respect to plants where poison gases were being produced. I knew the three large plants which were operated by the I.G. but were working for owned by the Reich Dyhernfurt, Gendorf and Falkenhagen. Furthermore, I knew that in the I.G. plant Verdinger Adamsit was being produced. I also know that in the plant of Amendorf which did not belong to the I.G. Farben certain quantities of "Lost" were being produced. I then made the assumption that these three large plants which were being operated by the I.G. Gendorf, Dyhernfurt and Falkenhagen, had under all circumstances to produce the largest part of the poison gas production. Compared to these quantities Amendorf could only play a very small part. Only subsequently did I learn that Falkenhagen was not at all being operated

and that Gendorf at no time was properly activated either, but that in the year of 1943 could only produce a relatively small quantity. This figure relating to Gendorf only became known to me a short time ago. I sent the respective document concerned to the Prosecution.

Q How did you estimate in your chart the production for poison gas. You stated you estimate, what was your basis for the estimate?

A The basis for my estimate, as I already said, was the size of these large plants and their capacity to produce poison gas, and I compared it there with the comparatively little Ammendorf.

DR. NATH: Mr. President, a mistake in translation is being pointed out to me. The word in German "Teichsoigen" was translated as working for the Reich instead of owned by the Reich. It constitutes a considerable difference, and I permit myself to draw your attention to it.

THE PRESIDENT: Thank you.

BY MR. AMCHAN:

Q Do I understand you correctly, then, Dr. Struss, that you knew the capacity of these plants for poison gas?

A No, I didn't know the capacity properly either, but I knew approximately the means, in other words, the funds which were used in order to construct these three plants. From these funds I had to conclude that considerably large capacities were available.

Q Am I correct in understanding, then, Dr. Struss, that you estimated the capacity of the plants after having facts with respect to the size of the financial investments? Am I correct in that understanding?

A Yes. The basis with respect to the investment into these three plants were not available at the beginning of the year, 1945, when I made these estimates, but since I knew these three plants, Dyhernfurt and Gendorf, and since I knew that Falkenhagen was of a similar size, too, I was in a position to make a good estimate as to the investments.

Q Would this fairly sum up the subject matter — and tell me if I am correct in understanding you. You know the investment figures for the plants in question, and from that you estimated the capacity, estimated

the capacity and then estimated the production. Is that the contention you pursue?

DR. DRISCHEL: Objection, Mr. President.

THE PRESIDENT: Objection sustained. That is certainly leading. Counsel, if you will pardon the suggestion, I think the Tribunal is pretty clear as to what the witness means to say on this subject. I don't want to restrict you unduly, but I think I can assure you that we pretty well understand what he is trying to say and what you are trying to ask.

BY MR. ARDHAN:

Q Just one more question on poison gas. I show you Document NI-11105 which we will mark for identification as Prosecution Exhibit 1572. As this document indicates, it is an excerpt from the records of the United States Strategic Bombing Survey. Now if you will please look at page 8 of the document dealing with 1 December 1942, you will see there "Production capacities." Will you please look at this document? That document is in German, is it not?

A Yes.

Q Do you know the source of that document from the German?

A No. I don't know the document. I have never before seen any such compilations. I do recognize, however, that apart from Ammendorf other poison gas plants were operated outside of Farben. I must add that at that time according to an agreement with Mr. Richin, teargas that is chlorid acetophenone was not included by me into chemical warfare agents of poison gases, because in my opinion it does not fall within the category of poison gases, as it is used in the English language. I have also discussed this matter with Mr. Elias, and there is no doubt that one can be of different opinion.

Q. Dr. Struss, does that document show the total capacity as of December 1942 at 9,450 tons?

DR. DIX: Couldn't we be told what document one is concerned with?

THE PRESIDENT: The objection will be sustained. As to what the document shows, it will show itself, and the witness has said that he has no knowledge or information about the document. Now, that places the two limitations on the cross-examination: Whatever the document shows, it speaks for itself; and the witness has said he never saw it before.

MR. ASHFAN: May I inquire whether, if the prosecution offers this in evidence, the Defense will invoke the twenty-four-hour rule?

THE PRESIDENT: The Defense may speak for themselves with respect to that matter.

MR. SPELCHER: Mr. President, I think I can handle this situation because I am supposed to take care of procedural questions so far as the Prosecution is concerned. We are not in a position to offer that document at the present time under the twenty-four-hour rule because we do not have the proper copies.

THE PRESIDENT: The chair would be interested in knowing whether the twenty-four-hour rule applies to a document that may be offered in the course of examination or cross-examination. Frankly, I am not advised.

MR. SPELCHER: No, it doesn't, but the way it was put by my brother counsel it was a question of whether the twenty-four-hour rule and clearly the twenty-four-hour rule is not involved.

THE PRESIDENT: It is my view, without being too fully advised, that that rule would have no application to a document offered in the course of examination. I may be wrong about that. I would be very glad to be advised. We can straighten this out in a moment. Is the Prosecution urging the introduction of the document at this time?

MR. SPELCHER: We do not offer it at this time.

THE PRESIDENT: Very well. There is nothing before the Tribunal.

Proceed with your examination.

BY MR. ANCHER:

Q Dr. Struss, with respect to explosives, did the TZA Bureau and other officials of I. G. Farben received audited reports of Dynamit A.G.?

A Yes, as far as I remember we received those at least until the first years of the war, and I also read them regularly.

Q Did those reports indicate the production turnover of Dynamit A.G.?

A Yes.

Q Did the reports further segregate explosives A, explosives B; munitions A, munitions B...and so forth?

A I can't really remember that, but in my turnover compilation of the TZA Bureau I have mentioned the figures of the D.A.G. up to the year 1940. I can look it up in my office without any difficulty.

At that time these figures were certainly segregated according to synthetics and similar products; according to explosives for peacetime use and explosives for war-time use. Starting from a definite period of time, I think it was the year 1940 that the turnover compilations were no longer sent to us by the DAG. That is with reference to explosives for war-time.

Q Do you recall whether these audit reports of Dynamit A.G. also refer to the activities of Verwertchemie?

A I cannot believe that. At any rate, I don't remember it all.

Q Now, I show you a series of audit reports which Dr. Eilbrun will show you in a moment, and I ask you whether that refreshes your recollection that those reports did refer to Verwertchemie and its operations.

DR. GILLERICHES: Your Honor, the witness is being placed in the position which, in my opinion, cannot be within the frame of the cross-examination. If these reports which the Prosecution has actually contain such a segregation, they can produce this document and they

can submit it into evidence. I don't think that this is the proper form in which to clarify this matter.

THE PRESIDENT: That would be true as to the contents of the documents; however, it might be proper for counsel for the Prosecution to show the witness a document for the purpose of directing his attention to certain subject matter or to refresh his recollection. But there is something even more serious than that here. If that is done, which has been done, it opens it up to cross-examination by the Defense and the Tribunal will have no way of knowing what document the witness had before him unless it is marked for identification, at least, so that we know what he testified about.

MR. ANCHAN: These are audit reports for 1935...1936...1937...1938, of Dynamit A.G., and we ask that they be marked for identification, as Prosecution Exhibit 1573.

THE PRESIDENT: The whole group as one offer?

MR. ANCHAN: Yes, Your Honor.

THE PRESIDENT: That is very well. I am sorry I said "offer." You said "identification only," did you not?

MR. ANCHAN: Only for identification.

WITNESS: Now I can answer the question. Before me I have the yearly report of the DAG, dated the 12th of October 1938. On page 1 there is a list of the turn-over figures, and on page 148, next to the technical plants, the GMB, Verwertungsschemie is mentioned. There is no doubt that I read this, but at that time it did not become clear to me in any way with that I was concerned. That this GMB Verwertungsschemie altogether had investments of two billions--that is, before the war and during the course of the war--I did not know at all. You must--

THE PRESIDENT: Mr. Witness, you have answered the question. The purpose of this question was not to prove the contents of that document; it would prove itself.

MR. ANCHAN:

Q Do you recall, Dr. Struss, who else received copies of those

D.A.G. reports?

DR. GIERLICHES: Your Honor, the last time I permitted myself to point out that the question is being put to the witness whether in these audit reports the Verwertchenie is being dealt with. He already answered the question to the effect that he could not remember it. Subsequently, this document is being put to him, and I think it would be much more expedient and much better if the Prosecution would then just submit these documents into evidence, which, after all, speak for themselves. As far as I am concerned, I should like to state that if these documents now are being made the subject of discussion, I would ask the Tribunal to postpone the time of cross-examination with respect to such documents until such time as the Defense has had an opportunity to examine such documents which are, after all, considerably large, and then start their cross-examination, as it lies in the interests of the search for truth.

With reference to these individual answers torn out of the context which, after all, are not a part of the knowledge of the witness but come from documents, this gives the Defense no sufficient opportunity to put questions to him in re-cross-examination which would clarify the matter.

THE PRESIDENT: The Tribunal can dispose of this very simply. Now, the Prosecution asked leave to pass this document to the witness to refresh his recollection, and he says it does refresh his recollection. He remembers now that there were documents of that kind. Then the Tribunal ruled that the matter of getting the documents before the Tribunal was not one of having him tell the contents of the document, but that if the Prosecution wanted the contents of the documents to get to the Tribunal it should offer them and then the document will speak for itself. Now, the last question counsel for the Prosecution has asked the witness was if he knows the distribution of these documents. Is that not correct? That was your question?

Now, that is proper and if the witness does know to whom these

documents, or copies of these documents, went, he can answer that question with yes or no as to whether he knows--and we are not yet getting into the field of the content of the document.

Your position would be well taken if the Prosecution was, by direction or indirection, seeking to offer the document. They have not done that; they have only asked the witness now if he knows to whom these documents went. We think that is proper.

DR. GIERLICH: Your Honor, I believe that is entirely correct. My objections did not refer to the last question, as to whether the witness knows to whom these documents were distributed. My objection referred to the previous questions which were whether the turnover compilations were segregated, broken down into certain parts, and the further question whether the Verwertchemie was treated in these documents.

I just wanted to mention that for purposes of clarification.

THE PRESIDENT: The Tribunal shares your view that as to the contents of the documents, they speak for themselves, and it would not be proper to use this witness to inform the Tribunal what the document contains. Counsel for the Prosecution can determine if they wish to offer the document, they may, and if not they may take it back to their files. It is no impropriety in the present question, and the witness may answer if he knows the distribution list on these documents.

BY MR. ALCHAN:

Q The question, Dr. Struss: Do you know who received those reports?

THE PRESIDENT: You ought to be able, Dr. Struss, to answer that question Yes or No.

THE WITNESS: No, I can't answer that exactly. I can say that the central bookkeeping office at Frankfurt received a copy and that Mr. Dancker sent this copy to me--or, two copies.

THE PRESIDENT: That is enough. You have answered the question.

BY MR. ALCHAN:

Q Will you please look, Dr. Struss, at the portion of the document which is being shown to you? And I ask you whether that refreshes your recollection as to the persons who received those reports?

THE PRESIDENT: Now, that, if it is something that is shown on the document, it will be shown on the document. You are not asking him for any independent fact that he knows about. If the document contains a distribution list, then let that document speak for itself.

Objection is sustained to that.

MR. ALCEAN: We will withdraw the question. No further re-direct.

THE PRESIDENT: Now, we are just about to recess for lunch, and as so frequently happens, and of which all you gentlemen must be fully cognizant, in the course of these cross-examinations we frequently find ourselves getting off into a maze of rather unimportant and insignificant points. There comes a time when, in the exercise of a sound discretion, the Tribunal feels a responsibility to urge counsel not to unduly extend the cross-examination. That is not to forbid your right, if you think it is important, but if you will bear that admonition in mind, gentlemen, we ought very promptly to be able to dispose of this witness and to get to something else.

The Tribunal will now rise until one thirty.

(A recess was taken until 1330 hours.)

AFTERNOON SESSION

(The hearing reconvened at 1330 hours)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: May we take this opportunity to make an announcement? There will be no session of this Tribunal on next Thursday or Friday. Thursday is a recognized public holiday for employees of the American Government, and it has been decided that in view of that there will be no session on that day or on the succeeding day.

Because of the fact, we shall at most have a very short week next week. The Tribunal has decided that we will be in session on Monday, Tuesday and Wednesday. Will you please take notice of that, and see that your associates are so advised?

You may proceed.

MR. ALCEAN: We are through with our re-direct, if Your Honors please.

THE PRESIDENT: Is there any further cross-examination of this witness?

CROSS-EXAMINATION

ERNST STRUSS - (Resumed)

BY DR. BERNDT (for Defendant Tor Meer):

Q. May I ask the witness to have the photostat again?

(Document presented to witness)

THE PRESIDENT: That is Document Number--

DR. BERNDT: This is Document No. NI-11106, which the Prosecution submitted this morning as their first document.

THE PRESIDENT: And what number did it have?

DR. BERNDT: It shall now be Exhibit 1517.

THE PRESIDENT: For identification?

MR. ALCEAN: That is an error. It is 1511 for identification.

THE PRESIDENT: Then the document is for identification.

Now, you may proceed, Doctor.

BY DR. BERNDT:

Q. Dr. Struss, would you please tell me whether this document is a record which was signed in an orderly manner by a stenographer and by a chairman?

A. It is only signed by Dr. Eckel.

Q. Would you please look at the top as to who probably dictated this document?

A. I know this style very well; it was Dr. Eckel.

Q. It says on the top of the document, on the first page, "Niederschrift."

A. It says "file note" on the top; file note about a discussion.

Q. Please tell me when the discussion took place?

A. On the 4th of April, 1939.

Q. Is it true that it was written down ten days later?

A. Yes; on the 14th of April, 1939.

Q. The number of participants was nine, is that right?

A. Yes.

Q. Did all nine participants receive one copy?

A. I cannot tell you, of course, whether they got them or not.

Q. If you look at the last page you can tell me because it says "five copies."

A. Yes.

Q. That means that not even all of the participants received this copy. On page 4, paragraph 2, it states that a final discussion took place with Dr. Trauch. May I ask you, did you take part in this final discussion?

A. No.

Q. Do you know whether Dr. Ter Meer participated in this discussion?

A. I consider that impossible.

THE PRESIDENT: Gentlemen, gentlemen! Please, will you wait for the translation to clear before you ask a question, counsel; or before you make an answer, witness?

Go ahead.

Q. This morning the impression was created by a question as though Dr. Krauch's approval was given for political reasons, which are mentioned on page 2, at the top. May I ask you to tell me that it was not so—

MR. ANGELO: One moment, please. It is objected. He said he was not present when the thing took place with Dr. Krauch.

DR. BERNDT: That is true, but may I explain that from the contents of the document it can be seen unequivocally that other reasons were decisive.

THE PRESIDENT: Then that is all the more reason why you should not ask the question. If it is apparent from the contents of the document, the document is the best evidence.

Objection sustained, Doctor.

DR. BERNDT: That is true, but, Mr. President, the document is not submitted as yet, but only —

THE PRESIDENT: You may submit it if you care to; it is available to you now. It is in the custody of the court, and it may be offered by Prosecution or Defense, so it is in your control.

DR. BERNDT: Then I shall only read one sentence—

MR. SPRAGUE: I have just told Dr. Berndt that we intend to offer the document, but we don't have the copies now to be able to offer it at this time.

THE PRESIDENT: Well, very well. Go on, gentlemen, there is nothing troublesome before us now at all.

BY DR. BERNDT:

Q. May I ask you the following, witness? Please turn once more to Exhibit 612, Document 10008?

A. Yes.

Q. First of all, Dr. Struss, is it correct that the production capacities which were in existence in the two Buna plants were always met and fulfilled?

A. Yes; certainly.

Q. Very well. Then please, from this chart, Exhibit 612, tell me—for 1939—how large the capacity was with regard to Buna.

A. Twenty-two thousand tons.

Q. And how high was it, in 1940?

A. Forty thousand seven hundred tons.

Q. That is not 100,000 tons?

A. No.

Q. Thank you very much.

MR. ARCHER: Just to make the record clear, Exhibit 612 refers to production, and counsel was interrogating him about capacity—I am referring to this exhibit.

THE PRESIDENT: We are only concerned with the testimony of the witness. If he can ascertain his answer from the question with his own answer, we are unconcerned with it.

MR. ARCHER: I was suggesting, perhaps counsel had another document in mind.

THE PRESIDENT: If counsel has made an error with reference to these documents, he can correct it.

Any further cross-examination? (No response)

May we assume there is no more direct examination?

MR. ARCHER: You may assume that.

THE PRESIDENT: Mr. Witness, you are excused.

MR. SPEECHER: Mr. President, I have just handed copies in the English and the German to the proper parties, including Your Honors, of Document NI-12516, which I would like to have marked as Prosecution Exhibit 1574, for identification. This is an affidavit of a doctor here in Nurnberg, who has care over the affiant Fritz Rather. Objection was made out of chambers to me about the competency of Dr. Rather as a witness by several Defense counsel, and, therefore, we undertook investigations and produced this affidavit which, on its face at least, subject to any other evidence, would indicate that the affiant Rather is completely competent to give an affidavit or to give testimony. The affi-

davit indicates that the physical condition of the affiant Ruther at the present time is such that he could not be taken from the hospital, because of this physical condition described in the affidavit.

Now, it seems to us that this offers a very good case for either cross-interrogatory or for the commissioner to depart with representatives of the Prosecution and the Defense in order to clear up any matters that may arise out of the affidavit of Dr. Ruther.

In that connection, and since at least unofficially an objection was made, I would like to offer at this time Document 1574 in evidence.

THE PRESIDENT: In the absence of objection, the document will be admitted in evidence, and we suggest that counsel for the Defense give consideration to the matter and advise the Tribunal as to its views after they have familiarized themselves with the situation.

MR. SPRACKER: We then come, Your Honors, to Document Book 91.

DR. FLAENHNER: I object to the affidavit submitted just now.

(Dr. Flaeshsner)

In this affidavit, an opinion about the state of mind of a witness is given. The witness who is addicted to using narcotics for years, and who gave an affidavit to the Prosecution in the summer of this year. The affiant, Dr. von Bayer who made this affidavit, NI 12516, Exhibit 1274, says that this witness, Ruther, was receiving treatment from him for a short while in the hospital here in Nurnberg, and then he gives this expert opinion about the mental condition of this Ruther. I have to object to this. I cannot admit that a physician gives his opinion based only on a short treatment, and that he judges whether a patient who is proven to be addicted to narcotics for many years, was of normal mind when he gave an affidavit for the Prosecution. For this reason I have to object to the admission of this affidavit.

THE PRESIDENT: This is not a matter that needs to consume time now. We understand that the affidavit is available to the Defense counsel. It is not an affidavit that contains any fact of probative value, so far as the merits of this case is concerned. If counsel for the defense wishes to make any showing as to the mental condition of the witness, his ability to testify intelligently or to answer interrogatories, you may prepare yourself to make the showing and the Tribunal will consider it at the proper time.

I may say that so far as the physician expressing his opinion as to the physical and mental condition of the witness, we know of no other way to ascertain the fact, except from some medical man. It is certainly in his field; it is not in ours, and we shall ultimately have to rely on the evidence, -- on such evidence. If you have anything further to show in regard to the condition of the witness, you may, if you do not delay it too long. Make your showing. There is nothing before the Tribunal at this time.

MR. SPEECHER: If it please the Tribunal, we then come to the presentation of that part of the evidence which we present especially and at this time concerning Count IV, which in the indictment is entitled, "Membership in the SS".

Paragraph 145 of the indictment contains the allegations. We ask that your Honors take judicial notice of those portions of the decision of the International Military Tribunal which has to do with the SS.

We also ask judicial notice be taken of the decisions of the Military Tribunal in Nurnberg which have principally been concerned with the SS. We should also point out, Mr. President, that of course our proof is a matter of the whole, and that some of these documents under Count IV have probative value under other counts, and that a number of our documents under other counts would give considerable enlightenment as to the importance of our allegations under Count IV.

With your permission I shall make only a very, very few brief references to some of these documents as I go through this book this afternoon. I by no means intend to be exhaustive.

Now we have not repeated the statements in Document Book 11, either the affidavits or the certificates by the defendants themselves, showing how far they themselves admit membership, and I only intend to make a brief reference to them at the beginning so that you can check that later on.

They are all in Document Book 11, Mr. President. The defendant Budefisch, at page 21, in Prosecution Exhibit 285, admits membership in the SS from 1939 through 1945. The defendant von Der Heyde, in Book 11, Prosecution's Exhibit 294 page 71, NI Document 9268, states that he was a member of the Reiter-SS. We will have some other proof to show that his membership was not so limited.

THE PRESIDENT: Mr. Prosecutor, what is the point, where you have admissions as you say, of the defendants, that they did

belong to the organization, and it is properly designated, -- what is the point of encumbering the records with any further proof on the subject?

Your first exhibit in Book 91, is that purely cumulative after you have his admission in the record?

MR. SPEECHER: Well, Your Honor, I think it is all the proof we need indeed with respect to pure membership, but on the underneath membership we feel there is some obligation on our part where we either deem it necessary or where we choose to seek to have the punishment for membership in the criminal organization extended, to make some further showing.

THE PRESIDENT: Well, I --

MR. SPEECHER: I quite agree that on the mere fact of membership that would be enough, but the questions of the duties, and the assignment or the relations of SS membership, for instance, in the case of defendant Schneider, to his position as the Hauptbetriebsführer, the main plant leader, who was charged with the social welfare of the foreign laborers for all of I. G. Farben, we think that those things are important, and we intend merely to point them out.

DR. HOFFMAN: (Counsel for the defendant von Der Heyde): Mr. President, I merely want to point out one remark of the Prosecutor. He referred to an affidavit which was given to the Prosecution by way of a stipulation, when he referred to the membership of von Der Heyde in the Reiter-SS. However, the Prosecution's statement seems to indicate that my client did not speak the truth in this stipulated affidavit. If such stipulation is arrived at between me and the Prosecution, I would consider it friendly if this document were not mentioned in such a manner.

MR. SPEECHER: I heard the objection. I do not know what reply I am supposed to make. It is not a stipulation. It is a certificate by Defense Counsel and we have stated on there that it was undertaken at the

request of the Prosecution, that is, that the questioning of the defendant by Defense counsel was made at the request of the Prosecution.

THE PRESIDENT: Very well. Perhaps the hope of the presiding officer that we might perhaps limit the time necessary to introduce this evidence was a forlorn hope. There does not seem to be such agreement as I anticipated. You may proceed with the offer of your proof.

MR. SPEECHER: Mr. President, I think I have indicated that I will spend about a half-hour or possibly less on this matter.

THE PRESIDENT: Very well.

MR. SPEECHER: The defendant, Schneider, at page 186 of Book 11, as Prosecution's Exhibit 317, NI 9753, indicates that he was a supporting member of the SS from 1933 through 1945.

THE PRESIDENT: Did you make your explanation what these documents were when you offered Book 11? Is this just duplicating our record here now with reference to the contents of Book 11?

MR. SPEECHER: The remarks I have just made are entirely duplication in the sense that those documents have been introduced. I do not think they are duplications in the sense that I am now trying to present a whole count before Your Honor, and merely telling you on what pages you can find in the simplest way the membership of these three gentlemen so far as they admit it.

I am sorry, that was my purpose.

THE PRESIDENT: Just a moment. What the Tribunal is concerned about, Mr. Sprecher, is that we do not bring the thought in here of having two or three presentations of a document. Now if you wish, in connection with the showing you are now making, to simply call our attention on the record to other documents that bear on that, that is permissible, but let's not establish a precedent here of documents being offered for one purpose on one explanation, and then going through a whole book in another. A reasonable time, that is what we are concerned about.

MR. SPEECHER: Thank you, Mr. President.

The first document, NI 6710a, may be marked in as Prosecution's Exhibit 1575. No statement of purpose is necessary. It merely shows the assignment, - the nature of the assignment of the defendant Buete-fisch in the SS, in April, 1939.

The next document, NI 6710b, may go in as Prosecution's Exhibit 1576. We only point out that this shows in 1940 that the defendant Buete-fisch was transferred as an SS leader, to the staff of the SS Main office.

The next document, NI 6710c, may go in as Prosecution's Exhibit 1577. This merely shows the promotion of the defendant, Buete-fisch, along with some other members, of the Himmler Circle, a circle we shall come to in a minute. It shows Buete-fisch's promotion from SS Captain to SS Major.

The next document, NI 6170d, Prosecution's Exhibit 1578, shows the promotion, along with other members of the Himmler Circle, from Major to Colonel.

(Mr. Sprecher).

The next document, NI 5170 c, may go in as Prosecution's Exhibit 1579. This document is something of a recapitulation in that it is an SS personnel card, showing the defendant Buetafish's promotions. We offer it principally because it indicates a membership on the last page, that is page 6 of the English, same page of the German.

The next document, NI 10624, Prosecution's Exhibit 1580, is a rather important document. We would like to have Your Honor's attention called only to a very few things. You will note that the defendant, Buetafish originally had not been admitted to the Party because of prior membership, up to 1931 in some kind of a Lodge, but upon his application for membership in the Party, consideration was given the matter ultimately by Hitler himself, and finally he was allowed Party membership without limitation.

The first of the personal attention by Hitler to one man's Party membership we think is deserving of attention.

The importance which the SS assigned to Buetafish in Farben is indicated at the bottom of the page, and his connection to the Four-Plan is mentioned.

Under (b) over on the next page, page 8, also page 9 of the German, there is a reference to two things we consider especially deserving of importance, the attention Buetafish gave the military officers, that is at Leuna, by way of lectures on synthetic gas and so on, and then the reference to the fact that within I.G. Farben's circle, there was rumor that he met the Fuehrer, that is Hitler, personally before the assumption of power.

The next document is NI 9971, and that may go in as Document 1581. This is a letter from Fritz Kranofuss, who acted as something of an Adjutant of the Himmler Circle of Friends, otherwise known as the Koppler Circle of Friends, otherwise known as the Koppler Circle of Friends, because Koppler Circle of Friends, because Koppler originally founded it for Himmler.

The date is 30 November, 1939. Mention is made that Himmler will attempt to attend the next meeting if possible, and that Himmler had asked Kranzfeld to inform the members that he gives his best regards to them, and down at the bottom of the page, a list as mentioned which shows who the members were at that time, and if Your Honors will note some SS leaders who attended the meetings are mentioned.

We ask you to note on the right hand column of the attached list, the important positions held in government by some of the persons present.

That is purposed to show the connections which could be established in this means and the actual desire which Himmler on the one hand and these members on the other, might have sought to obtain through such contacts.

I will make no further statement on that until we come to some of the affidavits. The membership lists are rather revealing. Koppler the original founder of the Circle, was Himmler's original economic adviser, two members of the so-called SS Bank, Dresdner Bank; Oswald Pohl; Goering's brother; and a number of other positions, I won't mention at the time.

The next document, NI 6025, may go in as Prosecution's Exhibit 1582. Wolf states that he used to attend the Himmler Circle meetings as a representative of Himmler on frequent occasions.

Over on page 15 of the English, pages 16 and 17 of the German, some statements are made concerning the objectives of Himmler in forming the Circle, and the fact that on the famous Party Congress days here in Nuremberg, members of the Circle would be invited as Himmler's personal guests, to attend that affair.

Then going over to the next page, paragraph 5, mention is made of the annual money gift, and that Himmler and Wolff were both entitled to draw money from the account. We will come to those gifts in a little while. Mention is made about the Dresdner Bank as the SS Bank, and in paragraph 8 the intimacy of the Association of the Circle Friends is spelled out.

Over on paragraph 10, the question of the relationship between Himmler and his SS organization, and particularly Farben who is looking for a solution of its manpower problems, is spelled out.

The next paragraph indicates that SS leaders talked about the work and ideals of the SS in lectures which were given to this Circle.

The next document is NI 299, and may go in as Prosecution's Exhibit 1583. I ask your Honors to consider that document in connection with NI 382 which is already in evidence as Exhibit 1292. The exhibit 1292 is an affidavit by Pohl to which we really should have attached at that time, Exhibit 1583. That was omitted by error, but the two should be considered together.

The last part of Exhibit 1292, Your Honors, contains about four or five paragraphs concerning the Circle of Friends, and it mentions, among other things, some visits to concentration camps, and some more about various speeches which were made by Himmler or other people.

In the exhibit now before your Honors, Exhibit 399, mention is made about how the choice of members of the Circle were made, and if you go over to page 20, that is page 23 and 24 of the German, you will note that special mention is made about Kranevuss pinchhitting for Himmler in that connection in proposing people for membership. I think that will appear important at a later time.

Kranevuss undertook a certain testing concerning the loyalty and political reliability of the gentlemen who were proposed for membership. Statement is made that Pohl knows of not one declined membership upon invitation and states some reasons why.

I would like to point out only by reference to Exhibit 1431, which is NI 11118, in Book 73, at page 11, that it was about this time, in 1941, that Ambros wrote to ter Meer on the 11th of April 1941, and stated: "Our new friendship with the SS proves to be a great blessing."

The next document we come to is NI 8125, and may go in as Prosecution's Exhibit 1584. This is from Baron von Schroeder, in May, 1942, and it is addressed to Himmler. Schroeder acted as the treasurer of the Keppeler

Circle in the first instance, and took a great deal of initiative in soliciting funds for the Circle.

You will notice that Schroeder mentions that the purpose of the contributions from the Circle of Friends to Himmler was for his special tasks, and that he was again giving over a million RM which had been collected from the Circle of economists who were called Himmler's Circle of Friends, and notes that these friends are very glad to put at Himmler's disposal these contributions to help him out in his many big projects.

The next document is HI 13400, and may go in as Prosecution's Exhibit 1584 - 1585, I beg your pardon. This is a letter from the ZEFI, that is Ilgner's organization, - a branch of Ilgner's organization in Berlin, to the Central Committee of the Vorstand, the office of the Central Committee of the Vorstand, and it notes that upon the order of Schmitz, the contributions of RM 100,000 is being transferred to the special accounts in the Steindank.

DR. GIERLICH: (Counsel for Geheimrat Schmitz): Mr. President, may I ask you to place a question mark next to the entry in the index, because the contents of this memorandum in the index is allegedly supposed to deal with an amount of 100,000 RM paid to the Circle of Friends. However, the document does not contain anything which might justify this conclusion. The defense will prove, when presenting its case, that no payments were ever made or requested to the Circle of Friends, but that they only Christmas gifts to the next of kin of SS members who had been killed in action.

Therefore, please place a question mark next to the index.

THE PRESIDENT: That has been done.

MR. SPEECHER: The next document is HI 6045f. It may go in as Prosecution's Exhibit 1586. This is a letter from Himmler himself on the 25 August, 1942 to Baron von Schroeder. It mentions that he is taking off time from his heavy tasks, partly increased because of the death of Heydrich in order to write this personal letter to von Schroeder concerning the

Circle of Friends and he says that he wants von Schroeder to "inform all members of the Circle how very grateful I am to them for again contributing so generously over a million RM for my purpose. I know what sacrifices to the individuals this sum represents."

There is no proof at that point, Your Honors, concerning the widows and orphans of the SS, and I suggest to you, if I may, that if that were the purpose it could have been simply stated by Himmler. Copies of that document went to Wolff and Krennfull.

The next document, NI-8108, may go in as Prosecution Exhibit 1587. This is a letter from Kranefuss to Dr. Rudolf Brandt who has been convicted in one of these trials and Kranefuss states that he is sending Brandt a copy of a speech which he intends to give before the Circle concerning the death of Heydrich. We consider that very important here in connection with one point of common knowledge concerning the purposes of the SS and I will come to some documents on that in just a moment. You will notice that Himmler determined the subject matter of the lectures before the SS and who the speakers were to be and reference is made to certain proposed lectures concerning the SD, the Security Police of Germany, the Secret Police of Germany.

The next document — I beg your pardon, I wanted to make reference to the speech itself. There's a reference in this speech, and we think it's quite important, to the sub-humans who were hated by Heydrich. It mentions Jews and other criminals and how Heydrich was misunderstood by Germans because his personality and his tasks didn't make him very well understood in the popular sense of the word and he had to carry out harsh measures ordered by the SD and he covered them by his name and person, as the Reichsfuehrer, that is Himmler, does every day.

DR. HOFFMANN: Hoffmann, counsel for the defendant von der Heyde. Mr. President, I listened to the substance of the statement of the Prosecutor but I cannot find in the document cited by him any justification for his statements. It's true that the document speaks of Heydrich but as a matter of general knowledge Heydrich was the leader of the Reich Security Main Office and I don't see how he can be brought into connection with the SD and my client. I don't know that any speech has been given about the SD. Would

the Prosecutor be kind enough to show me where he is quoting from the document?

MR. SPRECHER: Which do you mean? The present document? I am quoting from one the past document where I quoted the SD. I didn't mention the SD concerning this document.

THE PRESIDENT: Gentlemen, we are wasting time unnecessarily. This Tribunal will measure these documents in the light of what counsel said about these documents. It's also true there's a great many observations made to the Tribunal that are purely argumentative in form. They are not helpful and it is just putting words on the record as the clock goes on. Insofar as Counsel can restrict himself to matters of fact rather than argumentative observations. We are going to give you time to argue this case in due course and you can put these documents in for what they are worth. To Defense Counsel I may say you need not concern yourself with argumentative observations. We will resolve this thing on the contents of the document.

MR. SPRECHER: Mr. President, the Prosecution will make every effort to condense its remarks and it has been our opinion for one whole count to call your attention to a few things at this time in connection with the offer of our proof which might be helpful in establishing our theory of this case. At page 29 of the English, that's page 32 of the German, the questions of the SD, that's the organization to which defense counsel just made mention, is mentioned and reference is made to the tasks again of that organization. I have mentioned that I soon will come to a document that will indicate the importance. I would like to call your attention, if I may, at the bottom of page 29, the statements of Heydrich had, as Reich Protector of Bohemia and Moravia,

had shown what he was capable of doing. What he was capable of doing. We will come to that.

THE PRESIDENT: Now, Mr. Prosecutor, that's the point of what I am trying to say. Tell us what the documents say and we will determine what the conclusion to be drawn from it is. It's just taking time unnecessarily here on a comparatively simple series of documents. We are not concerned a great deal to listen to you when you tell us what this document is. But when you tell us that this shows this and this shows that, that's argumentative and it will be disputed and you will have ample opportunity in due course to show us what conclusions are to be drawn. It's now we are just concerned about is what's shown in those documents but without your conclusions.

DR. HOFFMANN: Mr. President, please excuse me. I have to express once more that in this entire document there isn't a single word mentioned about the SD. Mr. Sprecher must have been mistaken. There is a lot here about all possible organizations, but nothing about the SD. You cannot read anything from the document, that's not contained in it.

THE PRESIDENT: Counsel, your observations are in the record and we will measure the document in the light of what you say it does or does not contain and what the prosecution says. If we can have here in the next few minutes statements of fact as to what these documents contain and get them marked in evidence, we will determine in due course what conclusion they warrant. Gentlemen, that's a simple proposition and we ask you gentlemen to conform to our desires in that respect.

MR. SPRECHER: I call your attention to the statements at the top of page 30. It's page 33 of the German and then

and shown what he was capable of doing. What he was capable of doing. We will come to that.

THE PRESIDENT: Now, Mr. Prosecutor, that's the point of what I am trying to say. Tell us what the documents say and we will determine what the conclusion to be drawn from it is. It's just taking time unnecessarily here on a comparatively simple series of documents. We are not concerned a great deal to listen to you when you tell us what this document is. But when you tell us that this shows this and this shows that, that's argumentative and it will be disputed and you will have ample opportunity in due course to show us what conclusions are to be drawn. It's now we are just concerned about is what's shown in those documents but without your conclusions.

DR. HOFFMANN: Mr. President, please excuse me. I have to express once more that in this entire document there isn't a single word mentioned about the SD. Mr. Sprecher must have been mistaken. There is a lot here about all possible organizations, but nothing about the SD. You cannot read anything from the document, that's not contained in it.

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MR. SPRECHER: I call your attention to the statements at the top of page 30. It's page 33 of the German and then

I would like to pass over, with your permission, to Document NI-10149 which is Prosecution Exhibit 1588 and here's an excerpt from a German publication concerning the measures which were taken against Lidice, the Czech village that after Heydrich had been killed--and this refers to a communique concerning that matter.

DR. FLAECHEISNER: I do not wish to encumber the record unnecessarily but I doubt the probative value of these documents. From the following documents it can be seen that this document here, 12401, is an excerpt from a document which was in the library in Frankfurt. It's impossible to draw any conclusion from this document as to the knowledge of the defendants Buetelesch and von der Heyde, who are concerned in this case, since both of these gentlemen didn't have their offices in Frankfurt.

DR. HOFFMANN: Mr. President, may I add the following? The statements which have been made here about Lidice went through the German press as well. There's nothing extraordinary in these statements and, in my opinion, this is a document which might be presented in another trial, the Greifelt trial. I don't know why the Prosecution wants to submit this document here to support proof on general knowledge.

THE PRESIDENT: What's your view Mr. Prosecutor, as to the materiality of this exhibit, please?

MR. SPRECHER: Dr. Hoffmann's remarks that the communique concerning this alleged reprisal went through the German press; it seems to me indicates largely our reasons for wanting to show what it was a matter that was published broadly and that we found in two different places, not merely Frankfurt but also in Berlin; that it was found actually in Farben's files themselves. You remember that

there was a speech before the Circle of Friends concerning the whole matter of Heydrich and we think it has relevance in connection with the showing which everyone in Germany knew about, in fact, everyone in the world who read the newspapers and listened to the radio.

THE PRESIDENT: The character of the information is this Tribunal takes judicial knowledge of the statement by reason of the IMT judgment?

MR. SPRECHER: Yes, sir.

THE PRESIDENT: Does this bear upon any membership of any of these defendants in this organization?

MR. SPRECHER: No. But there's some information in the IMT judgment that something of the purposes of the SS and what the members of the SS were doing would be helpful in connection with the showing of the weight to be attached to the membership in meting out punishment or in judging criminality, the defendants criminality, by the individual member.

THE PRESIDENT: Is that the theory upon which you offer it?

MR. SPRECHER: Indeed.

THE PRESIDENT: The objection is overruled.

MR. SPRECHER: The next two documents this time need scarcely any mention except to mark them, if I may now, as NI-12398 and may go in as Prosecution Exhibit 1589 and NI-12399 may go in as Prosecution Exhibit 1590. These are two affidavits respectively of persons who had charge of Farben's archives, and indicate that the communique concerning Lidice was inclosed in some of the volumes in Farben's library. There are also indications to your Honors that shortly after Heydrich was murdered and Lidice had been obliterated as an alleged reprisal, the whole question of

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what happened to concentration camp inmates is coming up and the communique concerning the obliteration of Lidice mentions that the women were deported to concentration camps. If you will recall Exhibit 1507 for example, that's HL-5668, at a meeting of the Central Planning Board on 2 July 1943, the defendant Ambros requested in the presence of Krauch that with respect to building Buna-Auschwitz "additional inmates from the Auschwitz concentration camp be furnished."

The next document is EC-454. I would like to introduce that as Prosecution Exhibit 1591. This is a letter from Schroeder to Himmler on 27 August 1943. Schroeder indicates that "we", meaning the members of the Circle of Friends, "will always do everything in our power at all times to assist you in every possible way," and again mentions that for Hitler's special purposes the Circle of Friends is giving more than a million Reichmarks.

And the next document EC-453 may go in as Prosecution Exhibit 1592. This is a specification by Kranefuss to Himmler of who paid what in connection with the million mark contribution. You will notice on the attachment that the contributions to Special Account "S" in the year 1943 involved contributions from Duetsch and Schmitz of L. G. Farben. If there's any question raised about what Account "S" stood for we think that would help you to make your determination.

The next document, NI-12401 may go in as Prosecution Exhibit 1593. This is an excerpt from the Flick case, of which we should like your Honors to take judicial notice. In order to assist you in taking judicial notice of that matter we have incorporated these pages of the examination of Lindemann another member of the SS Circle.

DR. FLAUBENBERG: Mr. President, I don't know whether the document in its present form in which it was submitted to the Tribunal is a proper material for judicial notice. It's true that Lindemann testified as a witness in the Flick case and Lindemann is still available to the Prosecution now. If they want to refer to his testimony they can certainly get an affidavit from him or have him examined in chief before the Tribunal. However, if the record about the testimony in another case is presented it should be presented in its entirety but not even that requirement has been met in this document. The testimony and examination of Lindemann was very much in detail in the other case and such a detailed examination, of course, brings to light various aspects. This excerpt here contains solely a very short part of the examination by the prosecution in that case.

THE PRESIDENT: May I enquire, Mr. Prosecutor, if on what theory or what authority do you assert the claim that this Tribunal should take judicial notice of the testimony of a witness before another Tribunal as distinguished from the proposition that this Tribunal might take judicial notice of the judgments of another Tribunal?

MR. SPRACHE: May I have just a second?

THE PRESIDENT: Yes.

MR. SPRECHER: May I refer to Art. X of Ordinance No. 7 with respect to the conditions under which this Tribunal is authorized to operate? A statement is made "that the Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. They shall also take judicial notice of official government documents and reports of the United Nations," etc. And then there's a statement that in Art. 7 that — I am sorry, Your Honor, Art. 9 is not really in point. Art. 7 is in point. It states there that "admissible shall be affidavits, other statements, the record and the finding of other Tribunals." "The record and findings of other Tribunals," we think in point. With respect to the question or merely an excerpt of this document being put, an excerpt of this testimony of Lindemann being put, before the Court, of course, defense counsel has the remedy of bringing any other parts of it. Actually our sole purpose in presenting that was this speech which Himmler made at the time the Circle of Friends visited the front and the fact that Lindemann states Diefleisch was present.

THE PRESIDENT: Do you think that Article goes so far as to mean that in the trial of this case, without producing a given witness, you could go down and bring up the transcript of what he did testify in some other Tribunal to furnish your proof here and not produce the witness for cross examination and take the position that this Tribunal should consider the testimony of a witness in another Tribunal as an establishment of fact here?

MR. SPRECHER: Whether or not your Honors gave weight to the matter —

THE PRESIDENT: I am talking about admissibility now, not weight. This is a pure case of admissibility.

MR. SPRECHER: I am sorry. I misunderstood the last part of your question. You stated that to establish the fact and that, of course, —

THE PRESIDENT: I mean is it calculated to establish it?

MR. SPRECHER: Yes.

THE PRESIDENT: So as to be admissible?

MR. SPEECHER: Yes. In time, your Honor, we think it's the type of evidence which is not answered by the defense. It would be a proper basis upon which you should make a finding.

THE PRESIDENT: Even though that witness was presently available here in Nurnberg and could be brought here in person and subjected to cross examination? Do you think that the Prosecution could simply produce a transcript of this evidence before some other Tribunal and that they will stand on this transcript to establish the fact and not produce the witness at all?

MR. SPEECHER: We don't think, your Honor that Art. 7 allows any other construction.

THE PRESIDENT: Perhaps it doesn't but personally I would like to be pretty sure of that before we so hold.

MR. SPEECHER: Mr. President, I only want to say this; if your Honors, and apparently you do have some questions about the weight you would give to this matter — if your Honors so indicate we shall be glad to produce Lindemann and have another examination and another cross examination of him here but, frankly, in connection with the purpose for which this is offered I think the Prosecution has not only been within its rights under Art. 7 but exercised a sound discretion as to how to promote expeditiously the issues here. Now, if defense counsel wants Lindemann produced, they are free to produce him also. The defense counsels' case is not far away. Lindemann can certainly be made available. I think it's merely another means of prolonging the trial. And the point we want to establish —

THE PRESIDENT: This goes to a pretty important subject and something more involved than a pure matter of time.

MR. SPEECHER: Mr. President, may I ask that we at this time mark it for identification and then that you have time to think it over and then perhaps we might discuss it. I don't think that this is a matter where the Control Council Law, which we think is rather plain

upon its face, should be lightly passed upon. We feel quite as strongly about this as we did as to the admissibility of affidavits as such and that, I am speaking in that regard for the Chief of Counsel and I am only indicating to you by making that remark, we do consider it rather satisfactory in view of the principles and adjective law which, of course, passes upon the substantive rights of these defendants in many points, in the adjective law which should be found in proceedings of this kind.

THE PRESIDENT: Very well, the document NI-12401 is marked for identification only as the Prosecution's Exhibit 1593 and the Tribunal will take under advisement the question of its admissibility in evidence and would be glad to be advised as promptly as possible the views of Counsel for the Prosecution and the Defense with reference to how they consider the matter.

MR. SPEECHER: We will then pass to the next document, Mr. President. That's NI-2856, which may go in as Prosecution Exhibit 1594. This is the solicitation in 1945 by von Schroeder directed to Schnitz with respect to the customary contribution of 100,000 Marks for the year 1944. You will note the remarks that Himmler has always appreciated particularly this contribution and you may be sure of his gratitude.

Then the next document, NI-3807, which may go in as Prosecution Exhibit 1595. It's a letter from von Schroeder to Schnitz followed by a letter from von Schroeder to Quetefisch and in both of which he says "Probably on your instance Farben has paid 100,000 marks." The Prosecution's position is not that the 100,000 Marks was paid twice but rather it was only paid once but apparently von Schroeder didn't know which of the two gentlemen had taken the primary initiative.

We would like to make a reference, your Honor, to one part of Document -- that's Exhibit 80, NI-9200, the Meyer affidavit which shows that apart from the Himmler circle the contribution of 512,000 Reichsmarks were paid to the SS by Farben agencies between 1934 and 1945.

Now, the next document, NI-12148, shows that as late as December

1944 Buotefisch was a member of the Circle of Friends. May we put that in, that is NI-12148, as Prosecution Exhibit 1596?

The next document, NI-6712-A may go in as Prosecution Exhibit 1597. This is an SS personnel card similar to the one we had before concerning Buotefisch except this one concerns von der Heyde and it shows the membership and the rank which von der Heyde held in the SS. You will notice under the assignment and the column there, if you turn the book "F. i. SD". "F" stands for Fuehrer, which means leader -- leader in the SD, and you will notice that the SS card noted that von der Heyde's position was in the WIG of Farben.

The next document, NI-6712B may go in as Prosecution Exhibit 1598. The main entry we wish to call attention to there is that von der Heyde was an honorary collaborator of the SD main office. That's Sicherheitsdienst Main Office.

DR. HOFFMANN (For the defendant von der Heyde): Mr. President, the Exhibit 1598 should have the following words stricken from the index: "and showing his SS unit as the SD Main Office." From the document itself it can only be seen what the prosecutor stated, that von der Heyde was an honorary member. If someone is an honorary member in any association or in any office, and if he has his actual profession, his main activity, then he is not a member in the organization. It is purely argumentative and therefore I move that it be stricken from the index of the Document Book 91, and let the document speak for itself.

THE PRESIDENT: We have no way of controlling what the prosecution deems that a document establishes. In the index it is purely a matter of guidance. We shall indicate on our books that counsel for the defendant disagrees with the index and has pointed out wherein he thinks it is erroneous.

MR. SPEECHER: Mr. President, in view of the remark —

THE PRESIDENT: There is nothing before us now. Just let us go on.

MR. SPEECHER: I quite agree. I only want to point out that there is something additional. I want to translate it, if I may. Under "SS Einheit", which may be translated and has been translated as "SS Unit", in the second line just underneath the defendant's von der Heyde's name, there is in the German "SD Hauptamt" which has been translated as "SD Main Office". If there are any questions about those translations, we would like to hear about them.

The next document is FI-12, 456, affidavit of Otto Ohlendorf, which we'd like marking as 1599. Here it is pointed out by Ohlendorf, in paragraph 2, that when he came to one of the offices of the SD, the Sicherheitsdienst, he already found that the defendant von der Heyde was there as a confidence man, that he stood in a close relationship to Eilers, the Chief of the Industrial Department of the SD, and

that Farben also used him as a liaison man to a number of agencies, including the SD.

If you will then go down to the last paragraph, next to the last paragraph on that page 49, still a part of the paragraph with the numeral 2, further reference is made to the Himmler circle, which we think important. And in the last paragraph but one, Ohlenborn states that the economists of the circle only too gladly supported Himmler because it was useful to them to have more support from Himmler.

That concludes the documents that we have included in the book. I would like, with your permission, to refer to three documents that involve some of the gentlemen who are mentioned in these documents particularly. I don't so much refer to the defendants as I do to the persons who have given affidavits or whose names appear on these documents.

Exhibit 1513, Your Honors, we haven't reproduced here in this book, but that was a letter from Pohl to Kranefuss on the 15th of January 1944 and it pointed out that Farben had been employing concentration camp labor since April 1941. Kranefuss was, as I have said, the adjutant of the Himmler circle.

Exhibit 1526, VI-10040, is a letter from Krauch to Himmler which I would only like to call to your attention, to talk about the fact that if there is still another Buna factory after July 1944, Krauch will appreciate Himmler's help if he will make more concentration camp inmates available. And, in connection with the purposes to which the circle could be placed, we call your attention to the letter of Speer to Himmler as late as July 1944. That is in as Exhibit 16. Your Honors will recall that although Himmler had wanted to make a chemical factory on his own that move was resisted and that Himmler finally gave way to Speer's desire after Speer had noted that the Reich was still entirely dependant upon Farben in the chemical

field. That concludes our presentation.

THE PRESIDENT: That leaves open the question of the admissibility of the Document NI-12401, which has been marked for identification only 1593, relating to the testimony of a witness Lindemann before Tribunal IV. We do not want to impose a heavy burden on you, gentlemen with respect to briefing, but we will appreciate it if you will give us a memorandum giving us your citation of precedents and authorities that you think might be helpful to the Tribunal in resolving that question.

What is your next step, Mr. Prosecutor?

MR. SPRENGER: Mr. van Street, I would like to have him make a statement, please.

MR. VAN STREET: May it please Your Honors, the subject matter about to be examined consists of two affidavits given by Oswald Pohl. The first, if Your Honors please, as Exhibit 1292, NI-382, dated 5 August 1946, and is found in Book 67. The second is Exhibit 1583, NI-399, found in Book 91, pages 19 of the English and 22 of the German.

THE PRESIDENT: Do we understand you are going to call —

MR. VAN STREET: Your Honors, if I may I could finish this preliminary statement —

THE PRESIDENT: Very well. Do that before recess.

MR. VAN STREET: For Your Honors' information, the affiant Pohl was the Chief of the SS Economic Administration Main Office from 1 February 1944 until the final collapse. Pohl, as Your Honors may know, has been tried before a court here in Nurnberg and has been condemned to death. May it please the Court, it is felt that possibly Pohl is a potentially hostile witness for the prosecution. However, he speaks with high authority on certain matters and it is felt that he should be brought before this Tribunal for direct and cross examination in order that certain matters may be cleared, for the

proper adjudication of this important case. With Your Honors' permission, we will call Pohl to the witness stand during the time of adjournment or recess.

THE PRESIDENT: The Tribunal will now rise for its recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: May we interrupt you one moment?

MR. VAN STREET: Yes sir.

THE PRESIDENT: The Tribunal feels sufficiently advised with reference to the document marked for identification as Prosecution's Exhibit 1593, being Document NI-12401, purporting to be excerpts from the testimony of one Karl Lindemann before Tribunal IV, to rule on that matter at this time and to save you gentlemen the burden of briefing. The Tribunal will admit the document in evidence as a sworn statement of the witness, upon the same theory that it admits affidavits in evidence, provided the prosecution produces the witness for cross examination, if cross examination is requested by the defense, and with the further provision that if there is such a request and the witness is not produced for cross examination, the Tribunal will subsequently sustain a motion to strike it from the record.

MR. SPRECHER: Mr. President, may we ask the defense to indicate their desires as soon as possible?

THE PRESIDENT: Yes, that is entirely proper, and will you make known to the prosecution, as soon as you can, whether or not you desire to have this witness produced?

Perhaps the Tribunal should say one thing further. There was some observation made by counsel for the defense with reference to this being excerpts from the testimony of this witness. We think, in fairness to the defense, we should say that if the defense desires to offer any other part of the testimony of this witness before Tribunal IV, that it will be received if it is pertinent to any question involved in the trial of this case.

Are you ready to have the witness sworn?

MR. VAN STREET: Yes, your Honor.

THE PRESIDENT: This is a German national?

MR. VAN STREET: Yes, your Honor.

OSWALD POHL, a witness, took the stand and testified as follows:

THE PRESIDENT: Will the witness please stand, raise his right hand, say "I" and state his name.

THE WITNESS: I, Oswald Pohl.....

THE PRESIDENT: Now repeat after me:

Swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

The witness may be seated.

DIRECT EXAMINATION

BY MR. VAN STREET:

Q May it please the Tribunal, reference is now made to Exhibit 1292, NI 382, Book 67.

Mr. Pohl, will you please state your full name?

A Oswald Pohl.

Q Have you, Mr. Pohl, in your possession your affidavit, dated 5 August 1946, and identified as NI-382?

A Yes.

Q I now ask you whether or not this affidavit was given by you, under oath?

A This affidavit is an excerpt - a summary of a number of interrogations. I was not present when it was made. It was submitted to me and I then signed it.

Q Did you or did you not, at the time you signed the affidavit, swear that the statements contained therein were the truth?

A Yes, I assume I was under oath, but I don't remember it exactly.

Q Have you had a chance to review this affidavit recently?

A Yes, I read it and I considered it to be correct at the time.

Q I kindly ask you, Mr. Witness, and I know you will comply with it, to answer my questions as briefly as possible, keeping in mind, of course, that you will be cross examined and fuller explanations might be given at that time if so desired by you.

Mr. Pohl, I now direct your attention to a morning, two or three weeks ago, and ask if you remember whether or not I talked with you about this affidavit in the presence of your counsel, Dr. Seidl, who, incidentally, is also counsel in this case?

A Yes.

Q At that time, you indicated, did you not, that there were certain changes which you would like to make in the affidavit?

A Yes.

Q Now, will you kindly refer to the affidavit, examine it carefully, and state for the record the changes which you desire to make?

Did you hear my last question?

A Yes, I did.

Q To expedite the disposition of this matter, I might, with the Tribunal's permission, refresh your memory as to the paragraphs which you indicated might be changed as of that morning two or three weeks ago.

A Yes.

Q The first one is paragraph 3, under C, beginning with the sentence: "The industries employing the concentration camps...."

Are there any changes which you care to make in that paragraph?

A Do you want me to say what corrections I want to make now?

Q Precisely.

A It is not really a correction. It is a supplementation. If I say "The housing and the nourishment and the medical care were provided," if I said "care", I didn't really mean the complete care, but I merely meant the equipment for such housing, for such nourishment, and for medical care.

The next sentence after that needs no correction.

It says here: "The salaries for the inmates were to be paid by private industry according to the schedules of wages determined by private industry." That is not correct and that sentence did not originate with me. At that time I couldn't really remember the exact agreement and I only followed a suggestion by the interrogator. The German Labor Front

had nothing at all to do with the fixing of these salaries. The salaries were determined by me personally. The form in which it is now is wrong.

Q Proceed, if you will, please.

A Yes. I don't know whether you are interested in the following. The sentence: "The Reich income was always examined by Graf Schwerin von Krosigk, by the Ministry of Finance." That is not true. The Reich Ministry of Finance had nothing to do with the checking of such funds. If any income was checked at all, then it was always done by the Treasury of the German Reich, and never the Reich Ministry of Finance.

The complaint which is mentioned here, that the Reich Ministry of Finance complained frequently that funds received by them were too small refers to a time long before the war. About 1937 or 1938, when we set up our first budget. At that time, the Reich Ministry of Finance insisted that, for provisions furnished to inmates, compensation would have to be collected. Occasionally, it was pointed out that such compensations were too small. Later, however, the Reich Ministry of Finance did not repeat their demand.

Q Could you tell us, Mr. Pohl, in this connection, what was the net amount paid by industry to the SS for the labor of a concentration camp inmate?

A Yes. Well, not the SS. The payment went to the Reich through the mediation of the SS, as the administrative agency. Yes, I determined these sums. They fluctuated between three to six marks at the end, according to the subject to the output of the inmate, according to whether we were concerned with a skilled, or unskilled, laborer. The factory manager had to determine in which category he fell. Of course, the administrative agency couldn't recognize that. In other words, from three to six marks.

Q Now, are there any other corrections or additions which you would like to make to paragraph 3, under C?

A Yes. The assertion that the monies sent to the Reich for salary payment net sums because private industry usually 2/5ths from the salaries to be paid for services rendered. This sentence is not right. It does not originate from me and the interrogator suggested it to me. At that time, I didn't know the facts and I thought he was speaking on the basis of documents and that is why I assumed it to be correct. However, it is not. In the meantime, I was able to study my own documents from my own trial and I could determine the matter. The subtraction of the amounts on the part of the factories had never taken place. Only the expenses, the self-expenses for the procurement of equipment for the purpose of care could be subtracted, but subtractions for the maintenance of the inmates could not be made.

Q Is that all on that particular paragraph?

A Well, the final sentence reads:

"So that the labor of the prisoners for private industry was very cheap."

I don't think I can maintain that sentence in the form it is now. If you consider the sum of three to six marks and if you add to that fact that the work output, as shown through statistical documents, never reached the output of a free worker, then I cannot maintain the statement that the labor was very cheap, because it isn't true. In the year of 1943, we made statistical surveys in many factories and we found out

that the output of an inmate generally fluctuated between 20% and 80% of the output of a free worker. Very few actually reached a high output. Mostly, it was about 50% or 60% of the free worker. In other words, you cannot term this labor as being very cheap.

That is all I have to say about paragraph 3.

Q That, Mr. Kohl, is an interesting observation. That is to say, that survey in 1943. What were the underlying reasons for the output of concentration camp inmates being only 20% to 80% of the average or normal German?

A That is a very natural consequence. As a forced laborer, I would never do more work than I absolutely had to. After all, I would be under supervision. A lot of inmates have testified during these trials that not only did they not work very hard, but many actually sabotaged the work. Mr. Gruber in our trial, for instance, expressed that fact. It's a very natural consequence.

Q Would you say or would you not say that the poor physical condition of the concentration camp inmates had something perhaps to do with their small output?

A I really cannot say that.

Q Very well. Let's go now to the next paragraph. Are there any corrections in h which you would care to make? That is h, likewise under G.

A Yes. We have already discussed that the sequence, as it is listed here, is not correct. We have already said that the aviation industry was the predominant employer of inmates. They headed all other firms, such as Messerschmidt, Heinkel and other such plants. I also told you that, according to what I know now, the sequence would be something like this:

(A). Various firms of the aviation industry;

(B). Hermann Goering Works;

(C). Hugo Schneider A.G.;

I skip Antsgruppe C - this is the Reich. Then the last two would

be I.G. Farben and the last one would be Brabag. Brabag, as I r.e.m-
bered later, never had a constant staff of inmates. From time to time
they had work details in order to remove bomb debris. Those inmates
were never constantly active there. That approximately would be the se-
quence as I would put it on the basis of documents which I have in the
scantins received.

Q Mr. Pohl, befor we go further with the direct examination, I
should like to have passed to you the original copy of an interroga-
tion, identified as NI 388, each page of which had been signed by you and
the various corrections having been made. At the same time, I respect-
fully ask that a certified copy of this interrogation, NI 388, dated
the 31st of July, 1946, it being an interrogation of Oswald Pohl, be
marked for identification as 1600.

DR. GIEMLICH: Your Honor, I think that we are now confronted
with the same question which the Tribunal had to deal with this morning.
The witness is now being submitted an affidavit, of which he himself
is the author, and it is being made the subject of the evidence without
that affidavit having been introduced into the proceedings in an orderly
manner by which it could be made subject of cross examination on the
part of the defense. I think that, if the prosecution considers this
interrogation of that witness as material evidence, it would be in com-
pliance with orderly procedure if they should offer it as a document
and therefore would open it up to normal cross-examination by the
defense. I think that this morning, when discussing the very same
question, the Tribunal was of the same opinion.

THE PRESIDENT: Just a moment, please. On the present state of
the record, it would be presumptuous to assume what the prosecution's
object is. It may be merely to refresh the recollection of the witness
in regard to something. Perhaps you had better allow the examination
to proceed with another question, until purpose of passing the document
to the witness is disclosed to the Tribunal. Then, if you wish to make
an objection, we'll hear you.

MR. VAN STREET: Thank you, Mr. President.

Q Mr. witness, keeping in mind that memory is often an illusory thing, we have handed you this original copy of an interrogation in order to refresh you memory about matters which you will testify to on direct examination from here on out so far as your affidavit is concerned. No questions will be asked you in reference to the interrogation as to those matters which have been immediately covered - heretofore immediately covered.

A Counsel, may I say something.

THE PRESIDENT: Just give the Tribunal a moment. Just a moment, please.

Did the witness desire to say something?

THE WITNESS: Yes.

Counsel, should this affidavit of the 31st of July 1946 serve to refresh my memory at the moment?

MR. VAN STREET: Yes, if you will read the first few pages ...

THE WITNESS: Well, in that case, I must state that this Affidavit is not at all fit for that purpose. These are, after all, statements made at a time when my memory was extremely weak and it can hardly serve today to refresh my memory unless we want to refresh our memory about the wrong facts. That refers to July, 1946. I don't know the contents of the affidavit at the moment, and anyway, it is not fit to refresh my memory now.

THE PRESIDENT: We may say, counsel, that as the Tribunal views the situation, the witness has not, to this time, exhibited any lack of memory or familiarity with the things about which he has testified up to this time. It would be a little premature, it seems to us, to refresh his memory until there is some evidence of the fact that his memory needs to be refreshed. We have no objection to his having that document in his hand, or any other document, and you proceeding with your examination, if he feels the need of anything to refresh his memory it's available to him. If he does not need it, it will do no harm. So just proceed with the examination in chief.

MR. VAN STEELT: Your Honor, it might be well to point out at this time though that the procedural problem which faces us is that in anticipation of some of his answers so far as corrections are concerned from here on out in the affidavit if we permit him to make statements now and then refresh his memory a little later on in correction of those statements, we will be faced with the assumption or possibility of trying to impeach our own witness.

THE PRESIDENT: The view of the Tribunal in that regard is this: this witness has taken an oath to speak the pure truth and to withhold nothing. He is entitled to testify under the assumption that what he is telling us is the truth. We shall not anticipate that he will do otherwise or indulge any presumption that there will be any occasion to challenge his testimony until something occurs to lead us to that conclusion. We think that you ought to proceed in an orderly way to question the witness, permit him to answer as a free witness under oath here before this Tribunal under no restraint whatever, and then if some situation does arise that you are presented with some problem, we will deal with that when it arises.

MR. VAN STEELT: Thank you, Mr. President.

BY MR. VAN STEELT:

Q Mr. Pohl, let us continue then so far as your affidavit, WI-382, is concerned. I ask you to look at paragraph 1-a under D, and ask you if you have any corrections to make in respect to paragraph a.

A Paragraph a: "In the beginning of 1942" and so on. It should say, "In the Summer of 1942." I visited the Buna plant at Auschwitz for the first time in Summer of 1942. "The representatives of I. G. Farben present were Dr. Otto Ambros." I don't know — I don't think Dr. Ambros was present. I would almost say "no", but I don't know with 100% certainty. Dr. Duerrfeld was there, certainly. The names of the other gentlemen I remembered only because the interrogator refreshed my memory, Dr. Eisfeld and Dr. Santo. I assume they were there, but I couldn't say it with 100% certainty. It is quite wrong

that the gentlemen, Dr. ter Meer and Max Brueggemann -- oh, I don't know him at all, but, at any rate, ter Meer was not there at all. I saw him here in Kurnberg for the first time. I can say that with a hundred percent certainty. I knew of the name at the time, but then I knew many names, but I didn't know the person. I saw him here for the first time, and today I can say with absolute certainty that Mr. ter Meer was not present at the time. The conferences about the employment of labor were not the major point occasioning our visit. Our visit was predominately a visit of the plant as such. The entire labor commitment at the Buna plant had been regulated by Goering, already before that date, I think in 1939 or 1940, and then later by Hitler himself in the year 1941, so that I or the other subordinated agencies didn't have very much to do in that connection. The questions which arose daily could be handled by the camp commander within his own competency. He didn't need any interference from our agency. I was personally not present when Himmler was there in the year 1941. It says here, "Priority in the employment of prisoner labor for Buna Works." This is a stipulation which we never knew of in our daily work. The word "priority" was only coined in Kurnberg. It does not originate from me at all. I think the interrogator used it at that time. From our official correspondence I don't know that word.

"With reference to the friendly relations existing between Ambros and Himmler I have to make a correction. It was not quite clear to me at the time what kind of friendly relations should have existed. I just confirmed it by using a very general phrase here, but it became clear to me subsequently that these relations only consisted of both of them visiting the same school in the same town. From Himmler's attitude I couldnot have arrived at the conclusion that friendly relations had actually existed. I don't even know today whether Dr. Ambros was ever received by Himmler. He just asked me to transmit his regards at one time and I did that. That is all I have to say in connection with 1-a.

Q Now, Mr. Pohl, do you have any further corrections in this affidavit?

A Yes. Under B. Well, the entire paragraph 1 deals with I.G. Farben. Here I mentioned Blechhammer by error and included it into the I.G. Farben complex. That is wrong. Blechhammer was not an I.G. Farben factory.

Q That is paragraph 3 that you are referring to under D, D-1?

A Yes. Yes, 1-b. Now I go on to C. There is nothing I have to say about C. It can stand as it is. I go on to D. In the case of D we are concerned with the inspection of Teschopkau. That was a plant which was still being built. Dr. Ambros, I think, made this inspection possible upon my request. I was there with two or three gentlemen of my staff. It was only a very brief visit. No inmates were employed there, however. I go on to E. This deals with "oel schiefer" oil slate plant. Do you want to discuss that?

Q If you have any corrections, Mr. Pohl.

A Well, that is wrong. It is wrong that the German oil experimentation plant, under Karl Krauch, belonged to I. G. Farben. That is not true. I do not think I. G. Farben had anything to do with it. As far as I know today, this belonged to the Reich's Office for Economic Development of which Dr. Krauch was the head, but it had nothing to do with I. G. Farben. The connection hinted at here with I. G. Farben is, therefore, not correct. F. "Ambros also showed me the Phrix textile fiber plant, Wittenberg." That is wrong, too. I was there. I inspected the plant, but it does not belong to the I. G. Farben. It belongs to a competitor of I. G. Farben. I don't know who showed it to me, at any rate, none of the gentlemen here.

Q Now would you continue to look through the pages of the affidavit and tell us whether there are any substantial corrections to be made?

A Under paragraph 2, Hermann Goering Works. There is nothing I have to say about paragraph 2. Nothing about 3 either. Nothing about 4.

Q If it will be of any help to you Mr. Pohl, and possible to

expedite this matter, I believe that you stated at this conference which I referred to, several weeks ago at which your counsel was present, that the only other correction which you cared to make was paragraph 7 under E, which is on page 5 of the English and should be about page 5 of the German.

A 77

Q 7.

A Referring to Krupp?

Q No. 7 under E, under letter E, page 8.

A Max Ilgner?

Q Right.

A Is that what you mean?

Q That is right.

A Yes. That is also not correct. I saw Ilgner here only for the first time in Burnberg. I knew of all the names, but at that time I couldn't remember whether I had actually seen the persons. Only when I saw them here in Burnberg could I determine that they were really unknown to me. I had never seen Ilgner before. Therefore, this is incorrect.

Q Are there any other corrections that you care to make?

A I have to read it through. There is much more. We skipped some pages already.

Q I just simply referred you to that particular item to refresh your memory as to what happened at the conference. Now if you choose, go back to where you had left off —

A Yes, I know that. I know.

THE PRESIDENT: Take whatever time, Mr. Witness, that is necessary for you to examine the document and to make whatever corrections you wish to make.

A I mentioned a number of construction firms here. Under 11 and 12 for instance, on page 7 two construction firms, Dyckerhoff and Widmann and Hellmann and Littmann are mentioned. Really I cannot say

under oath whether they actually employed concentration camp inmates. At that time I said that many large construction firms employed inmates, and since the interrogator mentioned a number of construction firms to me, I assumed that they probably would have employed prison labor, but I can't say under oath that all these firms actually did. I have to leave that question open.

DR. GILPICH: Your Honor, in this very detailed statement of the witness many parts are contained which obviously have nothing at all to do with the case in question here. In the interest of expediting the proceedings, may I permit myself to make the suggestion that the questioning and the cross examination, too, be limited to such portions which are obviously in connection with the trial here? Employing that procedure much time will be saved, and the record will be much clearer if the questioning refers only to such parts as are connected in some way with this trial. Other corrections of other parts of the statements can certainly be made in another way.

THE PRESIDENT: There seems to be very much merit in the suggestion of Counsel for the Defense that a very considerable part of this document could have no possible connection with this proceeding. While we do not wish to limit or restrict the right of this witness to make corrections in his affidavit, it may be said that we are not concerned with any corrections other than those which apply to this case and these parties on trial, and insofar as there may be inaccuracies, errors or incomplete statements as to matters that are of no concern to this Tribunal, it does seem we might pass that over and thereby save considerable time. I would be glad to have your observations on that, Mr. Prosecutor.

MR. VAN STREET: I would like to ask one more question, if Your Honor please.

THE PRESIDENT: Very well.

BY MR. VAN STREET:

Q Mr. Pohl, I go back again to this conference of some three

are in his affidavit if somebody else wants to use it or something. We are not destroying the affidavit, but could we not strike from the consideration of this Tribunal those parts of this affidavit that bear no relationship to this case and then confine and limit the cross examination to those subjects?

MR. VAN STREET: May I have a moment to confer with my colleagues?

THE PRESIDENT: Surely.

MR. VAN STREET: Your Honor, the Prosecution will yield to that suggestion.

THE PRESIDENT: Now before we commit you to it definitely, is there someone who can speak on behalf of Defense Counsel and can advise us as to whether or not that procedure is agreeable to the Defense?

DR. SEIDL: Your Honor, the suggestion of the Tribunal exactly coincides with the suggestion which I wanted to make to the Tribunal before. It will greatly expedite the cross-examination if it is first clarified what parts of the affidavit are to be part of the cross examination and with what parts we can dispense. We suggest that the Prosecution strike certain paragraphs of the affidavit so that we know exactly to what we have to limit our cross-examination.

THE PRESIDENT: Since it is apparent from a cursory examination of the affidavit that most of it in volume at least may not be pertinent to this matter, perhaps you could approach it conversely by indicating the parts that you do consider to have evidentiary value and all other parts stricken for the purposes of this case. It would be accomplished more quickly than to do it in the usual way. If you would care to, Counsel, go over to the table and sit down with your associates and reach a conclusion on that. I think we can save a very considerable time and limit this inquiry to matters of some value as far as the case is concerned.

Do you have something to say, Dr. Gierlich?

DR. GIERLICH: Yes, Mr. President. In supplementation I should

THE MARSHAL: The Tribunal is again in session.

MR. VAN STREET: May it please the Tribunal, I shall indicate by the following what is being retained by the Prosecution in this affidavit: NI-382 -- everything else that is not designated will be considered stricken -- A, B, C, and D, down to Hermann Goering Works, will remain in. E-7 will remain in.

THE PRESIDENT: Just a moment, please, now --

MR. VAN STREET: E-7 is on page 5 of the English and page 8 of the German.

THE PRESIDENT: Very well.

MR. VAN STREET: E-11 will remain in. And finally those paragraphs 1, 2, 3, and 4, under "Circle of Friends", which is on page 11 of the original (or German) and 7 of the English.

THE PRESIDENT: Now, does counsel for the Defense have in mind clearly the parts of this affidavit that are in, and being the parts now mentioned by the Prosecution, and that all other parts of this affidavit are, for the purposes of this trial, considered out, and not the subject of direct- or cross examination?

You may continue, Mr. Prosecutor.

BY MR. VAN STREET:

Now, Mr. Witness, referring now to an interrogation of you, designated NI-388, will you please refer to that document? And I ask you if you did not state, on page 1 of that interrogation, that Himmler wanted the concentration camp labor for Farnen and Auschwitz treated with great urgency --

THE PRESIDENT: Would you mind, Mr. Prosecutor, to give the Tribunal the benefit of your thought as to the propriety, purpose, of this showing.

MR. VAN STREET: Your Honor, this is a matter which is obviously directly related to the large-scale employment of concentration camp inmates by ^Farben at Auschwitz, and we were just getting to the fact that whether or not -- trying to find out through this witness -- whether or not Hamlor wanted the matter treated with great urgency.

THE PRESIDENT: Well, let me suggest to you that so far as this trial is concerned, our uniform policy has been that the Prosecution may offer an affidavit, or, as has occurred here now, part of an affidavit, and that you may supplement that affidavit with oral testimony from the witness if you so see fit. And then the affidavit or the parts of the affidavit which you offer, and the testimony of the witness from the stand here, are within the scope of cross-examination.

Now, I take it from your remarks now, you are not offering and do not intend to offer at this time as part of the testimony-in-chief of this witness what you denominate an interrogation.

MR. VAN STREET: No, Your Honor, but that is marked for identification.

THE PRESIDENT: That being true, aren't you more or less in the position of, in a sense, cross-examining the witness with respect to something that is not before the Tribunal?

MR. VAN STREET: Your Honor, we had not considered it as such. We had simply handed this witness a copy -- or, as a matter of fact, the original of his interrogation, by which we thought he could refresh his memory, and ask him certain questions.

THE PRESIDENT: To state it conversely, would not this be true? That you are in a situation where you must

introduce that interrogation, or question the witness and allow the Defense to cross-examine on the basis of one or the other? In other words, you cannot cross-examine your own witness, and you have a choice, it seems to me, of either offering the interrogation and making it the subject of cross-examination, or questioning the witness and making his testimony the subject of cross-examination.

MR. VAN STREET: With Your Honor's permission, I will withdraw the question.

THE PRESIDENT: Very well.

MR. VAN STREET: Reference is now made, if Your Honor please, to NI-3999, which is Exhibit 1583, and may be found in Book 91; 19 of the English and 22 of the German. The Prosecution would like to strike the following paragraphs in this document: Paragraphs 1, 2 --

THE PRESIDENT: Will you pardon an interruption? I wish you would tell me again, please, the page of the English Book.

MR. VAN STREET: The page of the English Book, Your Honor, is 19, in Document Book 91.

THE PRESIDENT: Yes, thank you.

MR. VAN STREET: I will now start again.

THE PRESIDENT: Yes, thank you.

MR. VAN STREET: The prosecution strikes the following paragraphs: 1 and 4.

BY MR. VAN STREET:

Q I now ask you, Mr. Pohl, if you have a copy of your affidavit identified as NI-3999?

A Yes, I have it here.

Q Keeping in mind that paragraphs 1 and 4 have been stricken, do you have any corrections or additions to make

at this time?

A I have to read it through first The first has been stricken, is that right?

Q The first paragraph has been stricken, and also paragraph 4.

By the way, Mr. Pohl, did you not have a copy of this affidavit as well as NI-382 handed to you while you were sitting in the hall this morning to read?

A Yes, I read it a few times, but before making my testimony here you will permit me to read it again? You want to know exactly what I want to correct and you want to know what I am going to maintain, and I have to refer to every point. That is why I have to read it. I hope you will permit me to do it.

Number 2 is all right. In the case of paragraph 3, the inspection of the Wolfen Film factory in Bitterfeld,, a Dr. Christian Schneider ...well, I don't know any Dr. Christian Schneider. At that time I said that I didn't recall exactly with respect to Max Illner and von Schnitzler, whether they were present. Today -- and I repeat what I said before -- I can say with absolute certainty that these two persons were not present because I have since made their acquaintance. Gajewski was there. That is right.

Then 5 -- (4 has been stricken)-- in the year 1939, and not in 1937, that I became a member of the Circle of Friends.

With reference to 5, I have nothing to add. It is a general paragraph.

MR. VAN STREET: Mr. President, I was thinking at this time, probably --

THE PRESIDENT: Were you approaching through your

direct examination, or will you need some more time?

MR. VAN STREET: I will probably need a little more time,
Your Honor.

THE PRESIDENT: Very well. The Tribunal will rise
until nine-thirty Monday morning.

(The Tribunal adjourned until 24 November 1947,
0930 hours.)

Official Transcript of the American Military Tribunal No. VI in the matter of the United States of America, against Carl Krauch, et al, defendants, sitting at Nurnberg, Germany, on 24 November 1947, 0930-1630 hours, Justice Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI, Military Tribunal VI is not in session. God save the United States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, you may report with respect to the attendance of the defendants.

THE MARSHAL: May it please your Honor, the defendant Schmitz is sick in his cell, suffering from heart trouble. He should be here perhaps tomorrow.

THE PRESIDENT: Are all of the other defendants present

THE MARSHAL: Yes, sir.

THE PRESIDENT: Thank you.

Are there any preliminary announcements from the prosecution?

MR. DUBOIS: I would like to make a few brief comments on our program for the three trial days of this week.

After the witness Pohl has concluded his testimony, we will put the witness Frossard on the stand. Following that, we will proceed with the presentation of documents in Document Books 84, 85, 86, 87, 88 and 89. I understand that Document Book 89 was delivered on Saturday so that all document books have now been delivered. There will be no Document Book 90. There was some confusion in numbering.

Then, thereafter, we will proceed with Document Books 82 and 83. Now, it is possible that the presentation of some of those documents will be interrupted if witnesses should arrive from foreign countries. In that connection, the prosecution would greatly appreciate receiving advice from the defense, as promptly as possible, as to whether or not there are

any more witnesses whom the defense does not want to cross examine. If possible, we would like to avoid a situation that occurred Friday, when we brought the witness Earlich in from Czechoslovakia and then learned, after he got here, that the defense did not desire to cross examine him.

Now, the prosecution expects to rest its case at the end of next week or possibly before, subject to certain matters, such as the authentication of certain documents and subject to the cross examination of any affiants whom the defense may wish to cross examine and who have not yet been produced, either through interrogatories or by producing the witness on the stand at some appropriate time in the future.

THE PRESIDENT: Thank you.

Anything from the defense.

(Nothing indicated)

Then the witness Fohl is in the box and the witness is with the prosecution.

MR. VAN STREET: May it please the Tribunal, the witness is now with the defense.

THE PRESIDENT: The defense may cross examine.

Now, counsel, we presume it is not necessary to remind you that very substantial parts of the affidavit, which is the subject of cross examination, have been stricken from consideration by the Tribunal and that the witness has made changes in the affidavit of which you should take notice in the course of your cross examination.

You may proceed.

DR. SEIDL (Defense Counsel for the defendant Duerrfeld):

May it please Your Honor, I shall strictly limit the cross examination to parts of the affidavit which the prosecution has maintained as part of their submission of evidence.

THE PRESIDENT: Thank you.

CROSS EXAMINATION

BY DR. SEIDL:

Q. Witness, you were the Chief of the SS Main Economic and Administrative Office. Since when were you concerned with the administration of concentration camps and with the employment of inmates in the economy?

A. Since the 3rd of March 1942.

Q. What were your tasks within the framework of the concentration camps? Just state it very briefly.

A. It was my task to supervise the labor employment, from an administrative level.

Q. How many inmates, towards the end of the year 1944, were employed and housed in concentration camps?

A. Towards the end of 1944, there were approximately 600,000 inmates. That could have been a little more, but roughly there were 600,000 to 700,000. I consider 700,000 to be the absolute maximum.

Q. How many of those inmates were employed in the armament industry?

A. Approximately 250,000 to 300,000.

Q. How many armament industry plants did there exist during the war, according to your recollection?

A. You mean throughout the Reich?

Q. Yes.

A. I really don't know.

Q. At any rate, there were many thousands of such plants?

A. Well, I would assume so.

Q. From your recollection, can you state how many armament firms employed inmates from concentration camps?

A. There were 165 labor camps, and there couldn't have been more armament plants employing inmates than that figure.

Q. In your affidavit you state that it was the duty of the individual factories to care for the housing, nourishment and medical care of the inmates. Is it true that with respect to the accommodations, the factories had to erect the barracks and all other equipment of the camp, but that the administration of the camp itself was a matter for the competent agencies of the SS?

A. Yes, that is true.

Q. What were the tasks of these factories with respect to the feeding and care of inmates? Am I correct in saying that they merely had to supply the food, but that the distribution and processing of such food was a matter for the administration of the camp, for the SS?

A. Yes.

Q. Who determined the amount of food rations for the inmates?

A. The Reich Food Ministry.

Q. Did the inmates employed in armament industry receive additional heavy workers' rations, or what can you tell us about that from your own knowledge?

A. The inmates employed in armament industry received the same heavy workers' or long hour workers' rations as all other free workers employed in the same factories. From the WVHA, the Main Economic Administrative Office, I issued the directive that 90% of all inmates employed, even if they did not come up to the standard of receiving such additional rations, should receive them anyway, in order to increase in this way the general standard of nourishment of all the inmates. With respect to the execution of this order, all the camps had to send me monthly reports. In other words, they had to report that 90% of the employed inmates indeed had received such additional rations.

Q. You go on to say in your affidavit that the

factories were responsible for the medical care. Am I correct in saying that the factory had to erect hospitals, but that the medical care itself was under the responsibility of SS medical officers? Anyway that this would be correct for the large labor camps?

A. That is true.

Q. From whom did these medical officers in the concentration camps receive their directives? Did they receive them from the Supreme Chief Physician of concentration camps who was with the Chief of all concentration camps?

A. In no way did he receive any directive from the factory. The physicians received their directives from the medical office in the SS Operation Office on the highest level, and then such orders were channeled through their immediate superior who was, in every case, the head physician of the concentration camp. Such head physicians were always supplied for such factories and camps.

Q. Who had the disciplinary power over inmates who were employed in armament industry and housed in such a labor camp? Was it the factory manager who had disciplinary power or the camp commandant?

A. It was only the camp commandant. The enterpriser himself had nothing to do with the administration of the labor camp. To administration, in this sense, belonged the supervision of inmates from a disciplinary point of view.

Q Is it correct that there was an order by the Reichsfuehrer SS according to which guards were strictly prohibited to even touch an inmate other than a punishment had been laid down against him?

A Yes, such an order was in existence.

Q Who was the only man competent to execute punishment on inmates?

A It was the camp commandant, within the framework of the disciplinary powers issued to him. Beyond that, it was the Inspector of concentration camps and, on the highest level, Himmler himself.

Q Is it true, in particular, that the execution of every corporal punishment depended upon the Amtsgruppe D of the concentration camps?

A The corporal punishment, of male inmates, could only be carried out upon written directives of the Inspector of concentration camps and this in turn only upon written order of Himmler himself.

Q Last week you already testified that the fee for every inmate was determined by you and was between three and six marks per day, according to their qualifications. Did I understand you correctly?

A Yes.

Q Were the factories entitled to make deductions because of the nourishment that they issued and would you say that a deduction of eighty pfennigs for nourishment and other expenses was proper?

A The factories were only authorized to deduct expenses which arose for them. That is, expenses for rations which they placed at the disposal of inmates and for which they had to pay the Reich. These amounts fluctuated between fifty pfennigs and one mark per head per day.

Q You go on to say that the representatives of the war economy or armament economy turned to you in order that you might allocate inmates to them. Throughout those three years of heading the inmates labor commitment did you gain the impression that the heads of the free economy were particularly interested in getting inmates, or what impression did you get?

A I can judge from the number of requests which reached me personally that the enterprises were not particularly interested in obtaining inmates to staff their factories. Relatively few such requests reached me personally. Most of them went over the camp commandants of concentration camps to the Inspectorate of concentration camps in my office. It was Amtgruppe D. Then, however, such matters were sent to me for my approval. Hardly more than ten such employers came to me personally throughout these two or three years. I am sure there weren't more than ten.

Q Was one of these ten employers a representative of I. G. Farben Industry or one of the defendants in this dock?

A With representatives of I. G. Farben I never negotiated personally regarding labor commitment of inmates. That wasn't even possible because Goering, from a higher level, and Himmler had already ordered and determined the commitment of inmates for labor.

Q You go on to state that the commitment of inmates in private industry had been very cheap. I am very surprised at the answer to my previous question from which one must conclude that private industry obviously didn't consider employment of inmates as being very profitable. How can you explain this apparent contradiction?

A I have already replied to this question when talking to Counsel for the Prosecution. I have already pointed out that the output of an inmate by now means came up to the standard of the output of a free worker. I have already pointed out that we were able to determine that very clearly. The reasons for that situation are to be found, and if I may use a comparison here, in the nature of an inmate's work. You find that in every case, penal prisoners work always is more expensive work because the will to work is obviously lacking.

Q Why then didn't private industry try to stop such employment of inmates which obviously didn't pay them any dividends? Could you find out anything about that?

A Of course, under pressure every port is good in a storm. If all other possibilities to receive workers have been exhausted, even the last possibility will be exploited even if it is inexpedient and even if it little serves its purpose.

Q You then gave us a list of such plants which predominantly employed prison labor. If I understood you correctly, you wanted to maintain, in paragraph a of your affidavit which discusses Antsgruppe C of your Main Office -- Was I correct in assuming that this was the so-called Sonderstab Kammler, Special Staff Kammler?

A Yes, they remained heading the list. The Sonderstab Kammler, which represented the Reich as employer used approximately 170,000 inmates for its own purposes only.

Q Within the framework of this special staff, a number of private firms were active. Is that true?

A The Special Staff Kammler, in order to execute its tasks, naturally employed private enterprises, construction firms, etc.

Q You wanted to testify that in second place you have to mention the plants of the aircraft industry even before the I. G. Farben industry. From memory, can you state how many inmates the Messerschmitt-Werke, for instance, employed?

A I know this figure exactly. There were approximately 40,000 inmates employed in all their factories.

Q In your affidavit you go on to state that in the year of 1942 you visited the Auschwitz plant of I. G. Farben Industry. You then corrected yourself that that was in the summer of 1942. Witness, is it possible that this visit only took place in the beginning of the Fall of 1942? In particular, if I put to you that the newly erected labor camp IV was only activated by the inmates in October of 1942?

A I'm afraid I cannot state the exact time of my visit in the summer of 1942. I don't know whether it was in late summer or early fall. In the year of 1942, I really wasn't in the labor camp itself. That was

later. I think that was in 1943.

Q In 1942 were you in the plant of I. G. Farben Auschwitz?

A In 1942, on the occasion of my first visit there, I went to the construction central office of which Dr. Duerrfeld was the head, and there I inspected the entire construction project and its organization, using many charts. Then I crossed over to a number of parts of the construction site and looked at them.

Q And when doing that, did you see inmates being employed?

A I don't know whether in 1942 I already saw inmates. The number of workers crawling about that place was so high that I really can't remember it now. After all, not only inmates were working there, but predominantly other workers.

Q When did you go to the Auschwitz plant of I. G. for the second time?

A That was in the course of 1943.

Q Did you then also inspect the labor camp?

A Well, I inspected the labor camp either in 1943 or 1944, but I can't remember it exactly. I don't really know whether I was there again in 1944. At any rate, on the occasion of my second visit, I saw the labor camp quite briefly.

Q. Did the equipment in the camp comply with the policy which the Wirtschaft Verwaltungshauptamt, Main Economic Office, provided for such camps?

A. I passed through the camp; I looked at the barracks, I looked at the kitchen equipment, I looked at everything there in the line of equipment and generally gained a good impression. At any rate, I had no reason to complain about any particular deficiencies.

Q. Then you went through the plant itself, didn't you?

A. Yes, I went through the plant every time.

Q. And what impression did you gain about the organization, about the inmate employment, and about the entire labor commitment which you gained?

A. The inmates did not work on one place in a group, but were distributed all over the plant, some digging, some on construction work, some did installation work; here and there one saw groups of inmates working, always together with other workers who were employed there, so that really no distinction could be determined. One couldn't even see that special types of work were provided for inmates. At any rate, I didn't see that any special work commitment was intended for the inmates which in any way differed from that provided for other workers.

Q. Did you gain the impression that the work speed was terribly severe? Do you think that it differed in any way from the working method in other plants?

A. I couldn't make any observations which in any way were conspicuous to me from that point of view.

Q. You then went on to say in your affidavit that the I.G. Farben Industries had priority with respect to the inmate commitment in the camps. How is that to be understood?

A. I really don't know myself. The concept of priority,

as I already told Counsel for the Prosecution, was not coined by me. We didn't know any such procedure. At any rate, throughout my entire activity in this sphere, it didn't occur a single time that any plant received any preferential treatment. This concept in this affidavit is to be explained that Goering and Himmler probably wanted that this plant speed up their output, and that is perhaps how priority was used. Then, of course, I didn't know anything about it. The supreme war leadership, of course, had the primary interest in seeing that the plant was to be constructed very quickly. It was not the I.G. Farben. It was the plant which was to serve purposes of war, and therefore there was a constant interest shown on the part of the highest levels, such as Goering and Himmler, to see to it that this plant was to be finished as quickly as possible, and in this connection the concept of priority has to be understood.

Q. But, witness, it is not a fact that in addition to the I.G. Farben Industries, there were a number of other enterprises who had labor camps within the same district where the concentration camp of Auschwitz was located? Can you tell me how many labor camps altogether belonged to this huge concentration camp of Auschwitz?

A. To the concentration camp of Auschwitz belonged approximately 60 to 80 labor camps which were within the Upper Silesian or Silesian territory; 60 to 80.

Q. Then I can probably conclude that I.G. Farben Industrie was one of 60 or 80 enterprises who employed inmates in Upper Silesia?

A. Naturally, that is true.

Q. Then, witness, I have a number of questions with respect to the so-called circle of friends and that will conclude my cross examination. Since when did you belong

to the so-called circle of friends of Himmler?

A. From autumn of 1939, at the earliest. This period of time is quite exact because I only came to Berlin in the spring of 1939. Up to that time, I had been in Munich. Afterwards, when I was transferred to Berlin, I was called into the circle of friends.

Q. How often did the members of this circle of friends gather, at what intervals of time?

A. Such gatherings, as a rule, took place once a month.

Q. Did you yourself regularly participate in such gatherings?

A. During the first years, I did not, only when the general attendance on the part of all other members did not come up to Himmler's desires. He became very angry and certain pressure and control was exercised. That was true, I think, of the beginning of 1944, so from that period on I had to attend regularly insofar as I was not prevented from doing that because of official duties or trips. That was also true of the other civilian members of the circle of friends who also attended rather irregularly. At that time, at the beginning of 1944, upon the basis of such inattendance, a number of gentlemen were released, may I say, from this circle of friends.

Q. Witness, you say that you and other members of this circle of friends had to have a certain pressure exercised on them in order to even move them to go there. May I conclude therefrom that the conversations on the occasion of such gatherings did not seem to be of particular importance to the persons attending, as one would perhaps assume? Could you perhaps with a few words tell us what happened during such a gathering?

A. The evening began with a general dinner with everyone

sitting at one table. After dinner, one repaired to the adjoining rooms, two or three adjoining rooms, where all the members took a seat near small tables. Then, drinking a glass of beer and smoking a cigar, conversations started according to the desire of any participants. I, of course, didn't overhear such conversations, but I have the impression that it was more of a private entertaining club than a political circle which in any way determined policy on a high level or where particular problems concerning war economy were discussed. I talked relatively little to gentlemen from the economy. It was a matter of course one always considered oneself drawn to those persons with whom one had a certain personal contact, and this is how it happened almost of necessity that I was always sitting together with my comrades of the SS.

DR. SEIDL: Thank you. I have no further questions to the witness, Your Honor.

THE PRESIDENT: Thank you, counsel. Any further cross examination?

DR. FLAEGHSNER: Dr. Flaeghsner, counsel for the defendant Bueterfisch. With the permission of Your Honor, I should like to put a few questions to the witness with respect to the circle of friends.

BY DR. FLAEGHSNER:

Q. Mr. Pohl, did you now and again see Dr. Bueterfisch in this circle of friends?

A. Yes.

Q. Did you at any time talk to Bueterfisch on the occasion of your meeting him there about the commitment of inmates in industry generally?

A. I neither talked to Mr. Bueterfisch with reference to inmate commitment during such evenings when we met in

the circle of friends nor on any other occasion. I know that quite well, because I exclusively spoke about such questions to Mr. Kranefuss.

Q. Witness, in your affidavit WI-399 -- Your Honor, that is Prosecution Exhibit 1583, to be found in Document Book 91 -- you say that a certain Behrens at one time held a lecture in this circle of friends with reference to the resettlement of racial Germans into the occupied territories. Do you know whether Bueterfisch was present during that lecture?

A. No, I really can't tell you that.

Q. Then, witness, I should like to hear from you how it was possible to get into this circle of friends; in other words, how was somebody included?

A. That I don't know.

Q. Well, how was it in your case?

A. Let me supplement my answer. In one of these affidavits, I have given you a description how I conceived this procedure. How it was in reality, I really can't say. I had, of course, no influence on invitation and inclusion into this circle of friends. In my case, the matter was very simple. After all, I was Himmler's subordinate, I was a member of the SS, and we were assigned there more or less; in other words, I received a summons by Himmler to appear at this circle of friends, then I went. For me, it was an order.

Q. A little while ago, you used the expression, "released from the circle of friends." As far as I am informed, there was no actual membership in the circle of friends in the sense in which one can perhaps become a member of any organization or group. As far as I am informed, the gentlemen were either invited or were not invited, is that true?

MR. SPRECHER: Mr. President, I object to the assuming of facts not in evidence and to the counsel in effect giving a speech rather than asking a simple question.

THE PRESIDENT: Well, the Tribunal will disregard the impressions of counsel, but it is not improper for counsel to assume facts if he connects that with a question to the witness. This being cross examination, he is privileged to lead and to assume. The objection will be overruled, but the Tribunal will disregard the voluntary explanations of counsel. I think the question has, in fact, been answered. You may ask another.

BY DR. FLAEGHNER:

Q. In that circle of friends, was there a meeting of members when mutual matters were discussed or a vote was taken?

A. No.

Q. Was there a Vorstand, a managing board?

A. No.

Q. Were there bylaws?

A. No.

Q. Could the gentlemen who always were invited invite new members, or was that only determined by Mr. Kranofuss?

A. That was determined by Himmler personally. Naturally, not everyone who wanted to could come along.

Q. And Himmler, in your opinion, determined who would no longer be invited?

A. Yes.

Q. Before, you had stated that in the year of 1943 or in the beginning of 1944, Himmler had become angry because the attendance was so deficient, because so few people came. May I ask you how did this actually affect the circle of friends? Did Himmler personally accost these gentlemen during these evenings, or what did happen?

A. Himmler, even since 1943, approximately, was one of the rarest guests attending such evenings. I think in 1943 and 1944 -- and that is a high estimate -- he only appeared twice a year. Representing him, Krausfuss was always there; in other words, he exercised the control. He always knew who was missing and who would become conspicuous because of his lack of appearance. Then, of course, the person concerned was no longer invited and was then thrown out. There were written invitations sent out for every evening. Whoever didn't get such an invitation, of course, couldn't come.

Q Witness, did you know on the occasion of the evenings an economic political conference of the Party or the SS had taken place through the economic leaders present there?

A I heard nothing about that.

Q One last question, witness. Did you know whether in that circle of friends a lecture was held at any time about the Gestapo and the Security Service?

A Personally, I didn't hear any such lecture.

DR. FIABORSNER: Thank you, Your Honor. No further questions.

DR. MEYER: Dr. Meyer, counsel for the defendant Dr. Gajewski.

BY DR. MEYER:

Q Mr. Pohl, I only have one question to put in connection with the two affidavits that you submitted. In both of your affidavits, you are discussing a visit which at one time you paid to the film factory at Wolfen. You said that had occurred before the war. Could it be right that this visit took place in 1936 and 1937, approximately ten years ago?

A I personally mentioned the year 1937.

Q Well, you said before the war.

A No, I think I said 1937. You will find that passage somewhere in my affidavit. I know that it was either 1936 or 1937.

Q Well, in that case I am correct?

A Yes.

Q And it is also correct that Brigadefuehrer Fanslau, who as far as I know had his office in Dresden, had arranged this visit?

A Yes, that is true.

Q Now, in connection with this matter, you say that Dr. Gajewski greeted you in that factory, that you remember that and that at that time you saw him in SS uniform. Is it possible that your memory is deceiving you, considering that so much time has passed?

A I do recall that when I paid this visit, a number of SS uniforms became apparent.

A I do not recall that when I paid this visit, a number of SS uniforms became a parent. Whether Dr. Gajewski was in SS uniform himself, I cannot really say with absolute certainty today. I assumed it, but I really don't know exactly.

Q You don't know, do you, that Fanslau then arranging this visit turned to a man of the film factory who was a member of the SS and who was also, present during the introduction, a certain Colonel Krahel?

A Well, I think I remember the name, yes.

Q Do you think it is possible, then?

A Yes, it is not only possible, but it corresponds with the fact that Sturmbannführer Fanslau, who at that time in the rank of Sturmbannführer was administering one SS agency in Dresden, and had made this visit possible through the mediation of another SS member. I can't say with certainty whether not that man was Dr. Gajewski. Through Fanslau, I remember the name and I considered him to be the gentleman who at that time was instrumental in arranging that visit however, I can't say it with absolute certainty.

Q Then it would be possible that you mixed up Krahel and Gajewski?

A Well, I know the name Krahel, and of course there is a possibility that I made a mistake.

Q You mean that Mr. Krahel wore the uniform?

A Yes, that is possible.

DR. 19 Q: Thank you.

DR. SCHUBERT: Dr. Schubert, counsel for the defendant Burger.

BY DR. SCHUBERT:

Q Witness, I have a brief supplemental question with respect to the same matter. In your affidavit, Exhibit 1292, you are discussing your visit at Wolfen-Bitterfeld. Let me put to you that in Wolfen and Bitterfeld there were three plants of the I.G. There was the film factory in Wolfen and the diestuff factory, and in addition to that there was the I.G. plant proper at Bitterfeld. After you had replied to the questions of my predecessor, did I understand you correctly to

say that you only visited the film factory at Wolfen?

A As you have just mentioned the number of plants in this territory is so high that I can no longer state with absolute certainty today what part we actually visited. I am sure that the film factory was among the plants which we did visit. I also remember that we were present somewhere where I believe aluminium was being produced, but I think, didn't inspect the entire plant.

Q Well, witness, in connection with your testimony with respect to this visit, you say that all such plants employed concentration camp inmates. Do you still remember that part of your affidavit?

A What affidavit are you referring to?

Q I am referring to the affidavit which was the first one you discussed with Counsel for the Prosecution.

A Yes, I said that all the plants which we inspected had employed inmates.

Q Do you still have the affidavit before you?

A Yes, I do.

Q Would you be good enough to turn to Page 7?

A Yes, Page 7.

Q Under numeral 13. Then you say that all these plants employed--

A Yes, yes; I see. Well, I can't maintain that statement. No, I can't maintain it. Above this statement, you find a list of firms of whom I don't even know whether they did employ inmates. The names of the individual firms do not originate from me, after all, but the interrogator at that time mentioned them to me and then arising from my general knowledge I assumed that these were the people who employed inmates, but I can't maintain that in that form today.

Q Well, if I understand you correctly, you cannot say with certainty that in Wolfen or Bitterfeld concentration camp inmates were employed?

A No, I can't say that.

MR. SCHUBERT: Thank you.

DR. LINGENBERG: Dr. Lingenberg, Counsel for the defendant

Dr. Ilgnor.

CROSS EXAMINATION

BY DR. LINGENBERG:

Q Witness, I should like to discuss one single matter with you. It concerns Document NI-382, Volume 67, Exhibit 1292. Under E-7 you deal briefly with Dr. Ilgnor's personality. You made some corrections before and you stated that you can today say with absolute certainty that you hadn't seen Ilgnor personally before the collapse. In spite of your statement, however, the Prosecution kept this paragraph in your affidavit. With reference to the second sentence, No. 7, which says, "Brigadefuehrer, who worked for years with Ilgnor", I must ask you the following: What reason do you have to substantiate this assumption? I think it is fair to put to you in this connection that Brigadefuehrer Fanslau had given us an affidavit that he does not know Dr. Ilgnor.

A At first I have to repeat the statement that only here have I seen Dr. Ilgnor for the first time. In other words, I was a victim of a deception when I said that I had already seen him ten years ago. It also was an assumption on my part when I said that Brigadefuehrer Fanslau must know Ilgnor because he was the man who knew the gentlemen of the I.G. Farben personally, and I assumed that Ilgnor was among them. I didn't actually put this name into the affidavit. This is another name which was mentioned by the interrogator, and when he said "Ilgnor", then I thought, well, perhaps he was among them, too. This affidavit again only represents an excerpt from my interrogations. I personally was not the author of it in the form in which it has been submitted. A number of names have been mentioned, and I thought, well, I must have heard Ilgnor somewhere," and I think he must have been there, too. At any rate, Fanslau would know about it, and that is how this combination came about. I regret it very much that this name slipped in, but personally I didn't know these people. Had such names not been mentioned at the time, this wouldn't have happened.

Q. Then I probably understood you correctly to say that you have no concrete reasons to believe that Fanslau knew Ilgnor?

A. No, I had no reasons to believe that at all.

DR. WELTE: Dr. Welte, Counsel for the defendant Hoerlein.

CROSS EXAMINATION

BY DR. WELTE:

Q. Pohl, when answering the questions of my colleague, Dr. Seidl, you said that the plant administration had nothing to do with the medical care for concentration camp inmates. Did I understand you correctly?

A. Yes.

Q. To whom were the camp physicians subordinated?

A. The immediate superior of the camp physician in the main camp was the chief physician at the inspectorate of the concentration camps who in turn was subordinated to the chief of the medical office who was the Reichsarzt-SS, Reich Physician-SS. The physicians in the labor camp were subordinated to the Standortarzt, the head physician in the camp.

Q. In the case of Konowitz the channel of command was the following: camp physician Konowitz; main camp physician Auschwitz; Dr. Lolling, physician of the inspectorate, and above him Grawitz.

A. Correct.

Q. Did any plant administration exercise any influence on the appointment of a camp physician?

A. That is absolute nonsense.

Q. Could the plant administration issue any directives to the camp physician as to how they had to care for the working inmates?

A. That is entirely out of the question.

Q. Were the camp physicians also bound by the directives with respect to secrecy regarding matters in concentration camps?

A. Naturally.

Q. Would a camp physician have been in a position -- a camp physician who privately was a doctor in a hospital -- when going home on leave to tell his comrades or superiors about the conditions and events in the

concentration camps?

A. No.

Q. Was the transgression of such strict regulations punished severely?

A. Yes.

Q. Drugs, of course, belong to general medical care, isn't that true?

A. Yes.

Q. And does the answer you gave that the SS administration alone was responsible for the medical care of the inmates, also refer to their provision with medical drugs?

A. Yes.

Q. Which agency of the administration was responsible for the obtaining of medical drugs for concentration camps?

A. That was the main medical depot at Berlin.

DR. HELMER: Thank you, I have no further questions.

THE PRESIDENT: Now, Gentlemen, on behalf of the Tribunal I should like to observe that this witness has been quite thoroughly cross examined and the Tribunal finds itself in a state of gradually losing interest in further cross examination so far as any matter of much significance is concerned. We do not wish to deny any of the Defense Counsel the right to interrogate further if you consider the matter of importance, but if it is of not much importance, we think this cross examination ought to be very speedily brought to a close. We offer that observation for what it be worth to your judgment.

Is there any further cross examination of this witness? Any redirect examination -- and I may say, Mr. Prosecutor, those remarks apply equally to you.

MR. SPEECHER: We have a very few questions, Mr. President.

DIRECT EXAMINATION

BY MR. SPEECHER:

Q. Mr. Pohl, you said that the Himmler circle of friends was more or less a social gathering, as I understood you. Could you tell us whether or not Himmler ever mentioned to you why he was interested in controlling

so closely the attendance at this little social gathering?

A. Because the danger existed that the entire circle would disintegrate.

Q. Mr. Pohl, your interrogator so far as these interrogations are concerned was Mr. Alfred Booth. Did he ever tell you that he had been a concentration camp inmate in Germany before 1939?

A. No.

Q. Do you know whether or not his weight was approximately forty-five kilos or one hundred pounds?

THE PRESIDENT: Mr. Prosecutor, if you please, what pertinency is there to that inquiry now?

MR. SPEECHER: Well, Mr. President, I think the Tribunal is faced with measuring the credibility of this witness at the time he was under oath at one time, and from the remarks he has made under oath at another time, and he has indicated that the interrogator put a lot of things in his mouth. I was rather interested in having him talk about the physical nature of this interrogator and his technique in interrogation.

THE PRESIDENT: It occurs to us that the weight -- I mean the physical weight -- of the man who interrogated him is quite far removed from any subject that is pertinent to this inquiry.

MR. SPEECHER: It was a preliminary question.

THE PRESIDENT: Very well.

BY MR. SPEECHER:

Q. Do you know that Mr. Booth is now dead?

A No.

Q Tell us whether or not Mr. Booth suggested to you that Gajewski was in an SS uniform when you saw him?

A Mr. Booth didn't tell me that. I didn't say that either.

Q That is right, Mr. Pohl, I didn't say you did. Can you tell us the names of any of the industrialists who were dropped from the Hitler circle of friends?

A I certainly can tell you one, Walte.

Q How do you spell that?

A W-a-l-t-e.

Q What was his industry, do you remember? That was Hermann Walte, wasn't it?

A I don't know his first name.

Q Do you remember his industry?

A No.

Q Now I have one last question to you. I don't know whether or not you recall having heard of the testimony of Otto Ohlendorf before the IMT. You have been here in Nurnberg for some time. Perhaps you have, but I would like to ask you a question.

A No, I haven't.

Q I would like to ask you a question which I should like to have you answer directly to the Tribunal. Tell us simply whether or not you yourself believe that your experiences as an SS leader affected your ability to observe whether or not Jews and other inmates were really suffering or really being well treated in a concentration camp?

THE PRESIDENT: Just a moment.

DR. SEIDL: Dr. Seidl, Counsel for the defendant Duerrfeld.

I object to this question. It has nothing at all to do with direct examination, and I can see no other reason which could prompt the Prosecution to put this question to the witness. He, after all, is a witness for the Prosecution, and I can't imagine what purpose this question could serve, particularly with respect to the content of the affidavit.

camp Buchenwald.

The Court's attention is also drawn to Exhibit 1608 which is the Ding Diary again, on page 42, merely to point out the chart of case histories of preliminary tests to establish a sure means of infection were sent to Berlin. One death out of five sick.

And, on page 43, under the dateline 3 March 1942, "all persons vaccinated for immunization between 3 January 1942 and 1 February 1942, and the 10 persons for control, were infected with a virus culture."

The prosecution offers at this time NO 439 as its Exhibit 1610. This is an affidavit of Waldemar Foven, the SS physician in the concentration camp Buchenwald.

THE PRESIDENT: Counsel, just a moment. The preceding document designated NO 265. Is that the same diary as the one that was under consideration?

MR. WINSKOFF: That's right, Your Honor.

THE PRESIDENT: And you are just passing it because of the situation...

MR. WINSKOFF: Yes, Your Honor. There are a number of references to the Diary which have been put that way in order to facilitate understanding the chronology. The Diary covers a period of time and it fits in with the various documents in different points of time.

THE PRESIDENT: Well, was the first document the entire diary?

MR. WINSKOFF: That is right, Your Honor.

THE PRESIDENT: Does this duplicate the first document?

MR. WINSKOFF: They do not. The first diary is the complete diary and the page references are back to the first document.

THE PRESIDENT: Very well.

MR. WINSKOFF: I didn't think there was any confusion, but just to make the record perfectly clear - apart from the first page, all of that document is now in evidence and we're referring, as we go along, to different parts of the same document.

THE PRESIDENT: So these excerpts that subsequently appear in your book are repetitions of particular parts of the document that you bring in to preserve the context of your evidence?

MR. AINSKOFF: That is right, Your Honor.

The Court's attention is drawn to page 59 of the English, 87 of the German, where Dr. Hoven states, under paragraph 4:

"In the latter part of 1941 an experimental station was established in the Buchenwald concentration camp in order to determine the effectiveness of the various spotted fever vaccines. This department was called the 'Spotted Fever Experimental Station,' and was under the direct supervision of Dr. Ding, alias Schuler."

On page 60 of the same document, the paragraph marked 7, Dr. Hoven states:

"The experiments at Block 46 in the Buchenwald concentration camp were conducted as follows: One group of victims were first vaccinated with the spotted fever vaccine and then infected with the spotted fever virus. In order to contrast the effectiveness of the vaccine, another group of inmates were merely infected with the spotted fever virus without any previous vaccination. Between the Autumn of 1942 and the Summer of 1943, about 500 inmates of the Buchenwald concentration camp were used in these experiments."

The prosecution offers Document NI 12182 as its Exhibit 1611. This is another affidavit by the same Dr. Hoven and the Court's attention is called to page 64 of the English and 94 of the German, where the affiant states in paragraph 3:

"Upon Dr. Ding's instructions, the correspondence conducted between I. G. and Dr. Ding was signed by me as an outsider - for camouflage purposes, without my understanding anything about these typhus matters. Under the arrangement between Dr. Ding and the I. G., according to which various consignments of I. G. preparations earmarked for the typhus experiments in Block 46 were directed to my address; my name was likewise used as a cloak."

He states in paragraph 5:

"It was obvious that the experiments carried out in the concentration camps with I. G. preparations were undertaken in the interests of the I. G. which was eager to use....."

DR. KEMPS (Interrupting): Mr. President, in this affidavit of Dr. Hoven, there are various passages which I ask you not to admit into evidence if the prosecution should insist on offering them. On page 2 of NI 12182 it says:

"Dr. Ding personally told me - that was about the middle of 1942 - that the firm supplying Buchenwald concentration camp with the typhus vaccines did not wish the consignments to be dispatched to the typhus experimental station and that an agreement had therefore been made, according to which these consignments were henceforth to be directed to the 'Garrison Medical Office of the Waffen-SS Weimar'. That was a normal, harmless address from which the post office could not infer anything."

Here the witness Hoven is referring to what he was told by the deceased Dr. Ding, as far as the prosecution relies on this testimony, and, therefore, is the testimony of the deceased Dr. Ding. I should like an explanation from the prosecution as to whether they intend to offer this passage into evidence and, if so, I ask the Tribunal not to admit this passage in the affidavit.

On page 3 of the English text, under #5, page 65, there is another passage which I shall quote:

"It was obvious that the experiments carried out in the concentration camps with I. G. preparations were undertaken in the interests of the I. G. which was eager to use every means to determine the efficacy of its preparations, or rather, I should say, to have the SS do the dirty work in the concentration camps."

This is quite clearly an expression of opinion, not testimony of facts. I should like to ask that these passages of the affidavit not be admitted in case the prosecution insists on offering them.

THE PRESIDENT: The Tribunal is about to rise for its noon recess and we will pass this matter over until this afternoon.

Before we do recess, we would like to say that some of the members of the Tribunal are going to another place than is customary for our lunch. It is barely possible that we might be a few minutes late this afternoon. If we are, you will understand the circumstances and we will try, as much as we can, to be back on time.

The Tribunal will now rise.

(A recess was taken.)

AFTERNOON SESSION

(The hearing reconvened at 1400 hours, 24 November 1947).

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Gentlemen, we are sorry to be late. It could not be helped. Now, with reference to Document NI-12182, which has been marked as Prosecution Exhibit 1611, it is quite apparent on the fact of it that this document not only contains much in the way of hearsay but also much in the way of conclusions and expressions of opinion. The Tribunal has noted before that to eliminate what might be regarded as the objectionable parts of an instrument of this kind would require a great deal of time and perhaps disturb the context of the document so as to render it more or less unintelligible. Insofar as the exhibit will be the subject of cross examination and in view of the fact that the Tribunal considers itself competent to disregard the incompetent parts of the document when it comes to weighing it and giving it consideration, we think in the interest of time that the objection ought to be overruled, not so much because of the fact that there is not merit in the objection as that it will make for more orderly procedure in this case as in similar cases. The objection to the introduction of the document will be overruled, with the indication on the part of the Tribunal that it will disregard the incompetent parts of the document and in further view of the fact that it will be the subject of cross examination unless the Prosecution is waived by the defense. Prosecution may proceed.

MR. SPRECHER: Mr. President, do you have your Book 66 with you?

THE PRESIDENT: Just a moment.

MR. SPRECHER: That Book 66 is very uncontroversial material.

THE PRESIDENT: No, we do not. Would you like us to have them?

MR. SPRECHER: Yes, Mr. President. While they are being gotten, I can put in two small documents at another point in order to patch up the record.

THE PRESIDENT: Very well.

MR. SPRECHER: The first document we would like to offer at this time is NL-6073. Copies of that document in the German have been delivered to the defense center on the 21st of November, and copies have also been given to Your Honors, with instructions that your secretary see that they got in the right book. I will mention that again in a minute. May we offer this as Prosecution Exhibit 1612? I must make a very brief explanation, Your Honor. When the witness Frank-Fahle was on the witness stand, he gave considerable testimony concerning Prosecution Exhibit 833, which is NI 6221, which is found in Book 46, English Page 29, German Page 31. This document is the minutes of a meeting of the Commercial Committee in Berlin on the 24th of May, 1938. Present were the defendants Schmitz, Schnitzler, Haefliger and Ilgner, and part of the time the defendants Gattineau and Kugler. You will note that under the Item 11, Hungary and Czechoslovakia, Frank-Fahle reported on the discussion on Czechoslovakia which took place on the 17th of May of this year, the minutes of which were distributed to the members present. Those minutes are the document which was previously introduced and which Frank-Fahle previously talked about; namely, Exhibit 833. Is that clear, Your Honors? I am awfully sorry to bother you.

The next document I would like to offer is EC 14, which may go in as Prosecution Exhibit 1613. This was also a

loose document sent to Your Honors and to the defense counsel on the 19th of November, 1947. I have just given some extra copies to Dr. Boettcher and Dr. Merlichs. We would like to request that Your Honors insert this document in Document Book 47, after Prosecution Exhibit 852, which is Document NI 5760. That is Book 47, at Page 9 of the English, Page 28 of the German. The excerpts from this speech of General Thomas before the War College on 1 November 1937 are submitted principally in connection with Section G of Count I of the indictment, where General Thomas makes reference before the Military Economy Staff of the necessity of espionage and propaganda in connection with economic warfare. If you will just turn over to Page 3 of the mimeographed copy, the middle of the page, Thomas — and this is in November, 1937 — refers to the fact that economic warfare does require a sound estimate of the economic situation prevailing in the home country as well as similar intelligence about our potential opponents.

Then I would like to ask you to bear in mind in that connection the testimony of the witness Gerns concerning the English standby plants and the information Farben gave concerning that, and then go over to Page 5 of this mimeographed copy. You will note in the middle of the page, where it says "Page 16 of the original" — and if you will bear in mind the full sentence above the break in the page, I think it will be helpful. Thomas says, "In view of the fact that sizeable means will be needed during the war to make the necessary propaganda," etc. And then down below the break of Page 34 of the original — that is still on Page 5 of the mimeographed copy — Thomas says, "If an economic war is to be successfully waged, the same thorough preparations as made in wartime on the home front are needed.

The quicker and more suddenly the economic war starts the greater will be its success." And now I understand you have your Books 66?

THE PRESIDENT: Yes, that is correct.

MR. SPRECHER: I will mark these, tho, without any comment whatsoever, with your permission. NI-11492 may go in as Prosecution Exhibit 1614, a certificate concerning the positions held by the defendant Ambros. The little note in each case which states in the index that you should insert the document before another document or just after another document in Book 11 should be neglected, except insofar as it indicates to Your Honors with what documents in Book 11 you should consider these documents.

The next document, NI 10417, may go in as Prosecution Exhibit 1615. That is an additional affidavit of the defendant Haeffliger concerning his position. NI 10161 may go in as Prosecution Exhibit 1616, an additional statement on the positions held by the defendant Hoorloin. The next document, NI 11508, may go in as Prosecution Exhibit 1617.

DR. NELTE: I beg your pardon, Dr. Nolte. With reference to Document 10161, I should like to state the following for the acknowledgment of the Tribunal: This document supplements and corrects the document NI 9758 that you will find in Document Book 11 and in Document Book 84. That is what it says on paragraph 2 of the Index in Volume 66. It reads, "Would you please insert this document behind document NI 6787"? That is an error. It should read, "Please insert this document after Document NI 9758 in Document Volume 84, page 1." This is not a correction of NI 6787, but a correction of 9758.

MR. SPRECHER: Your Honors, I think we will accept Dr. Nolte's suggestion with the additional suggestion that

you consider it in connection with Book 11 insofar as there is anything in Book 11 concerning the defendant Hoerlein.

THE PRESIDENT: Very well.

MR. SPRECHER: I just mentioned Exhibit 1617. That is a certificate concerning the positions of the defendant Hoerlein. The next document, NI 10390, may go in as Prosecution Exhibit 1618, a certificate about the positions of the defendant Kuehne. The next document is an excerpt from the membership cards of the NSDAP concerning the defendant Kuehne. That is NI 6711 and may go in as Prosecution Exhibit 1619. The next document, NI 11089, is an affidavit concerning additional positions of the defendant Schneider, and may go in as Prosecution Exhibit 1620. The next document is a certificate concerning the positions held by the defendant Von Schitzler and it is numbered NI 11343 and may go in as Prosecution Exhibit 1621.

THE PRESIDENT: That completes Book 88?

MR. SPRECHER: Yes. Mr. President, I would like to make only a brief statement concerning the certificates we have just introduced in view of a comment made by the defense counsel the other day, only by way of clarification. Mr. Schonfeld, who was just at my right here, during this presentation took proposed lists of positions, more or less in the order of Appendix A referring to each defendant, and submitted them to defense counsel who in turn checked them with their respective clients and then returned these certificates and on them the prosecution acknowledged that it had requested that this procedure be followed.

THE PRESIDENT: Very well.

MR. SPRECHER: Mr. Van Street will follow.

COURT VI CASE VI

24 Nov 47-15-8-A-AEH-Stewart (Randler & Treidell)

MR. VAN STREET: May it please the Tribunal, I am now referring to Book No. 69. The subject matter about to be examined consists of two affidavits given by Joki Frossard.

Joki Frossard, if Your Honor please, is a Frenchman. The first affidavit is Exhibit 1351, NI-7507, and is found at page 84 of the English and 110 of the German. The affidavit is dated the 25th of May, 1947. The second affidavit has been marked in evidence as Exhibit 1352, NI-7508, and is dated 31 May 1947. This affidavit may be found at page 87 of the English and 113 of the German.

The Prosecution now calls Joki Frossard to the witness stand.

THE PRESIDENT: The Marshal will bring in the witness.

JOKI FROSSARD; a witness, was examined and testified as follows:

THE PRESIDENT: Mr. Witness, you will remain standing for the purpose of being sworn, and I shall administer you the form of the oath that prevails in your country. Do you swear to speak without hate nor fear, to say the truth, all the truth, only the truth? Will you raise your right hand and say, "I swear".

THE WITNESS: I swear.

THE PRESIDENT: You may be seated.

DIRECT EXAMINATION

BY MR. VAN STRAIT:

Q. Mr. Frossard, will you please state your full name?

A. Joki Pierre Frossard.

Q. Where do you reside?

A. Now at Oissel.

Q. Where?

A. At the Francolor plants, but my address is 35 Rue de la Brien Faisance, in Paris, 8th District.

Q. Now, Mr. Fossard, I now direct your attention to two affidavits given by you identified as NI-7507 and NI-7508,

and I now ask you if you gave these affidavits under oath and stated therein the pure truth and nothing but the truth?

A. Yes, perfectly.

MR. VAN STREET: The witness is with the Defense.

THE PRESIDENT: The Defense may cross examine the witness.

DR. HOFFMANN: Dr. Hoffmann, Counsel representing Dr. Drischel, Defense Counsel for Dr. Ambros.

CROSS EXAMINATION

BY DR. HOFFMANN:

Q. Witness, in June, 1943, you came to Germany, is that true?

A. Yes, it is true.

Q. Did you go to Germany voluntarily, or were you forced to go?

A. I was forced to go to Germany.

Q. Witness, who forced you?

A. I can't answer the question directly. My comrades and I were in the Youth Center, and one day we were gathered. I was part of the second transport, and at that time there were about thirty of my comrades who had not been taken yet, and we were brought down to Pount de Clair near Grenoble where they had gathered about two thousand Frenchmen. These Frenchmen entered behind barbed wire fences and left the camp only to go to Germany. The camp was guarded by French policemen and German officers.

Q. Witness, who issued the directive to the effect that you were brought to the camp where you found your other comrades?

A. I don't know.

Q. If I now ask you whether Dr. Ambros issued that

directive, would you say "yes" or "no"?

A. Certainly not directly.

Q. If I further were to ask you whether the Ministry of Labor or the Labor Commitment Office headed by Sauckel issued the directive, would you then say "yes" or would you say "no"?

A. Would you repeat that because I couldn't quite get it?

Q. If I were to ask you whether a German agency, the Labor Ministry or the Labor Commitment Agency, as it was headed by Sauckel, issued this directive, would you then say "yes" or "no"?

A. I would say "yes".

Q. You, in other words, would also say "yes" if I put to you that the I. G. probably didn't issue this directive?

A. No directly at least, not directly for my departure and those of my comrades.

Q. Witness, I should like to pass on to another matter which you described in your affidavit. I am referring to your arrest in 1944. Is it true that you were arrested then?

A. Well, yes, in 1944. That's right.

Q. You were there under the supervision of the Gestapo, weren't you?

A. The Gestapo came and fetched me, that's right.

Q. And then you were sent to the concentration camp of Mauthausen?

A. Afterwards, yes. That is right.

Q. Witness, let me ask you, these two incidents which no doubt were rather painful to you, the separation

from home and then your transfer into the concentration camp were not events which took place directly upon the instigation of the defendant Ambros or the I. G. Farben, is that true?

A. My personal opinion is the following, if you are interested in knowing it. The German Government certainly must have been under pressure to get foreign workers, and this pressure was exerted by the heavy industry, so if I should answer your question, I would say "no", but indirectly certainly "yes".

Q. But then, witness, this is your personal opinion, is it not?

A. You asked me for my personal opinion, didn't you? Yes, it is my personal opinion. You got your answer, didn't you?

Q. But, witness, you have no direct proof for certain facts, have you?

A. I was not Reich Minister at that time, and I couldn't really find out what was going on. I just gave you my opinion, as you asked me.

Q. Witness, having discussed these two events, I should now like to talk to you about your actual experiences in the Buna plant at Schkopau. Witness, what is your profession?

A. I am a chemical engineer by profession.

Q. What was your profession when in the year of 1943 you were sent to Germany from your studies?

A. In 1943 I was a chemical engineer, but I hadn't graduated yet. The reason was.....I regret.....that those of us who went to Germany did not have to pass the last graduation degree. That was a law which had been published.

In other words, I was a chemical engineer without really having gotten the degree of chemical engineering.

Q. How were you personally employed at the Buna plant? In what department did you work and in what capacity?

A. During the first week I was employed in the B-30. I think that was a laboratory, and after a week I was employed in the B-34, and this building was under the orders of the foreman, Mayer. My work was in a laboratory together with Dr. Lehnert, who was my boss. At the time I was always paid as an auxiliary worker.

Q. But it is true that you did work which was within your profession?

A. Well, that is a matter of opinion. If you think that a chemical engineer remains in his profession if he constantly works on the same analyses and cleans the glassware, then I did remain in my profession.

Q. Witness, may I ask you whether you had to wash glassware as part of your work? Were you ever employed as exclusive dishwasher, or do you mean to say that only incidentally you had to wash dishes in addition to your other work?

A. That was not only once in a while. I always washed my own glassware, but I was not properly speaking employed as a glassware washer. I was employed as head chemist. There were three or four young ladies who didn't know anything about chemistry and who were my superiors.

Q. Let me ask you again, by "washing dishes" you mean dealing with chemical glassware such as washing test tubes, etc.?

A. Yes, that is what I meant.

Q. Now, witness, in your affidavit you have stated that you were to a great extent acquainted with the question of

DR. HOFFMANN: Dr. Hoffmann, counsel for the defendant von der Heyde.

Your Honors, I can only explain the question of the Prosecution to be in connection with secrecy matters. I have no objection to this question, but if he does put the question, I want you to permit me to re-examine him again to a great extent, because then the door will have been opened to further matters.

THE PRESIDENT: Now the position of the Tribunal is simply this: This particular inquiry is not pursuing any matter that was brought out on cross examination. We think we are quite certain on that. We have ruled in the past that Counsel for the Prosecution in addition to using the affidavit may make the witness see his own for the purposes of supplemental oral testimony. If that is the purpose, this inquiry should have been in matter of time at the time the witness was first interrogated. There is no iron-clad rule that it must be then, but if Counsel for the Prosecution is conscious of the fact that you are now going into a new field that may open up a field of extended examination and cross examination. Counsel understands what is happening, and bears in mind the observation of Counsel for the Defense. The Tribunal does not feel free to sustain the objection, and the question may be asked.

MR. SPRECHER: Mr. President: I was asking the question only because Dr. Seidl asked what the witness observed when he was in Camp 4 of I.G. Farben and Auschwitz, and as we know, Camp 4 was composed of inmates who were largely Jewish and political prisoners, and so on, and he did testify about his observation there. However, I will withdraw the question because Your Honors were of the opinion that it was beyond cross examination.

THE PRESIDENT: Anything further from the Prosecution?

MR. SPRECHER: No further questions.

THE PRESIDENT: Anything further from the Defense? If not, so appearing, the witness is excused from further attendance, and the Marshal will escort him from the box.

DR. HOFFMANN: Dr. Ambros has asked me to make a statement on behalf

of Dr. Drischal, who is absent because of urgent reasons. I heard that a witness, Frossard, is to appear now, and I should like to ask the Tribunal to permit the defendant Ambros perhaps one hour in order that he may discuss the purposes of the cross examination of his Defense Counsel. I had no opportunity to put this matter to you before because I have been only asked to represent him today.

THE PRESIDENT: I am not sure that the Tribunal understands the request. Is it that the defendant Ambros be excused from attendance for one hour for that purpose?

DR. HOFFMANN: Yes.

THE PRESIDENT: Has the Prosecution any objection to that?

MR. SPRECHER: As I understand it, the present proposal is that the defendant Ambros should be excused an hour in order to discuss with one of the Defense Counsel proposed cross examination?

THE PRESIDENT: That is the way I understand it.

MR. SPRECHER: To that indeed we have no -- may we have a minute, Mr. President? This was announced, and we are rather taken by surprise.

THE PRESIDENT: Yes, very well.

MR. SPRECHER: Mr. President, if we could have the full morning recess now so that after fifteen minutes when the Prosecution comes back we could go on steadily through the morning with books, then we could postpone the Frossard examination until one-thirty this afternoon. Would that be satisfactory with Your Honors?

THE PRESIDENT: Well, the Tribunal is unconcerned as to whether we consume the time hearing witnesses or receiving documents. Would that meet your problem, Counsel for the defendant, if we take our recess now and then between the time when we come back in and the noon hour allow the Prosecution to offer documents? In the meantime we excuse the defendant Ambros to talk with his Counsel.

DR. HOFFMANN: Yes, this would serve my purpose fully.

THE PRESIDENT: Very well, the Tribunal will now rise for its morning recess.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: I am not sure that we had it on the record that the defendant Ambros is temporarily excused to consult with counsel, but the record may now so show.

Prosecution may continue.

MR. MINSKOFF: At this time, if it please the Court, the Prosecution would like to proceed with Document Book No. 84. The first three documents: NI-6787, NI-8004, NI-9811, have already been introduced as Prosecution Exhibit 296, 307, and 1520, respectively.

The Court's attention is drawn to page 2 of the English and 3 of the German, Exhibit 296, where the defendant Hoerlein states that after the death of "the Director Mann, senior, I, being the senior member of the Vorstand of the I.G. pharmaceutical section, became Vorsitzter (Chairman) of the pharmaceutical main conference and of the Aufsichtsrat of the Behringwerke; this latter function, however, was a purely nominal one, according to the statutes, whereas the active management was in the hands of Dr. Demnitz, and the management-in-chief in those of Professor Lautenschlaeger."

On page 9 of the English and 15 of the German, the defendant Lautenschlaeger states: "From about 1926 I was in sole charge of the pharmaceutical department at Hoechst. In 1926 I became a member of the board of directors; in 1931 I became a deputy member of the Vorstand of I.G. Farbenindustrie. After the amalgamation of the Behringwerke Marburg in 1932 I was also given complete control of this plant as well as its affiliated serum and vaccine plants: Eystrup, Neuhausen, near Koenigsberg..."

DR. PRIBILLA (Counsel for defendant Lautenschlaeger): Mr. President, I ascertained that the word "Oberleitung" was translated a few minutes ago by the prosecutor as "chief management", while here it is translated as "complete control". I should appreciate it if a question mark be put in this second place.

THE PRESIDENT: Perhaps we can reconcile that difference. What does

the Prosecution say as to the translation?

MR. MINSKOFF: If Your Honors please, I do not have anything further to add. This is the translation officially given to us, and I don't know which is the proper translation of the word.

THE PRESIDENT: Well, then we will mark it as subject to question, and pass it for the time being.

JUDGE MORRIS: May I make a suggestion, for the sake of the record? You have been reading, Counsel, from Exhibit 307, and the remarks we have had, pertain to that exhibit. I think the record only shows the page of the document book. May I suggest that when you make reference or that you read, that you refer to the exhibit number so we can more easily coordinate the transcript with the various documents?

MR. MINSKOFF: Thank you, Your Honor. I will. It is correctly stated that what was read last was from Exhibit 307.

"...and later the Vienna works and the Lemberg Typhus Institute. While in charge of these departments my exclusive field of activity was the development and production of pharmaceutical preparations, pharmaceutical chemistry, medical serums and vaccines, insecticides."

Further on the same page, Defendant Lautenschlaeger states: "From about 1927 up to 1945 I was a member of the pharmaceutical committee of the I.G. and took part in the pharmaceutical-scientific meetings and Main Conferences which were held approximately over six weeks."

And further he states: "In 1938 I was appointed General Manager of the Hoechst I.G. plant and director-in-chief of the I.G. Group Maingau (Middle Rhine)."

As Prosecution Exhibit 1520 the Court's attention is called to pages 18 of the English and 28-29 of the German, where the defendant Lautenschlaeger states, in paragraph 16:

"Professor Heinrich Hoerlein, as manager of the Sparte der Pharmaceuticals, has information on the pharmaceutical preparations which were developed in the Hoechst laboratories and the Behring works. He received special knowledge in the pharmaceutical-scientific and main conferences, at which he took the chair. These meetings, in which the Department Chief of the Hoechst and Leverkusen pharmaceutical departments and, frequently, also representatives of the Marburg Behring works took part, were, in so far as war conditions permitted, held every 6-8 weeks. In 1944, in the technical committee during a lecture on the new developmental work in the Hoechst and Marburg pharmaceutical departments, I spoke, among other things, on the production and testing of the typhus and dysentery vaccines. Professor Hoerlein was present at this meeting."

Prosecution offers NI-12178 as its Exhibit 1601 and NI-12177 as its Exhibit 1602. These two exhibits consist of an invoice and two letters, and are offered merely to show that, as far back as 1939, the I.G. Farben Behring work people were aware that Buchenwald was a concentration camp, that the SS-camp at Weimar-Buchenwald and concentration camp Buchenwald were the same place, and that the main medical office, the HSI, handled the financial accounts of the concentration camp.

Prosecution offers NI-12176 as its Exhibit 1603. This exhibit consists of four letters which are offered to show correspondence between the Farben Behring Werke and the concentration camp Buchenwald, and indicate

that the initiative in testing products in concentration camps was on the part of I.G. Farben Behring Werke, and that the Behring Werke in 1940 was aware that Buchenwald was a concentration camp and that inmates were to be used for experiments.

Prosecution offers NI-12179 as its Exhibit 1604. This is a letter from the concentration camp Buchenwald to I.G. Farben Hoechst, and is offered merely to show that the Hoechst plant of Farben was aware that Buchenwald was a concentration camp and that Weimar-Buchenwald and the concentration camp were the same place.

Prosecution offers NI-12180 as Prosecution Exhibit 1605. This is a letter from the concentration-camp Buchenwald to I.G. Farben Leverkusen, and is offered to show that Leverkusen was aware that Buchenwald was a concentration camp and that Buchenwald and Weimar-Buchenwald were the same place and, further, that Dr. Hoven was the concentration camp doctor.

With respect to NI-12185, Prosecution calls attention to the fact that it does not appear in this book, and withdraws the number at this time.

Document NO-1315 is already in evidence as Prosecution Exhibit 489; and Prosecution offers at this time NI-12181 as its Exhibit 1606 and NI-12183 as 1607. These three exhibits, if it please the Court, are reports of a meeting by three different persons: one by the Reich official, one report by the representative at the meeting from I.G. Farben Leverkusen, and one from I.G. Farben Marburg-Behring Werke.

The Court's attention is called to page 31, to Exhibit 489, where it is noted that at the meeting present for I.G. were three persons: Director Zahn, Neumann, and Dr. Demnitz.

On the following page it is pointed out that vaccine "which is presently being produced by the Behring Works from chicken eggs shall be tested for its effectiveness in an experiment. For this purpose Dr. Demnitz will contact Obersturmbannführer Dr. Mrugovski."

"If this Behring Works vaccine is proved to be effective, the production capacity of the Behring Works in Marburg shall be essentially increased.

DR. PRIBILLA (Counsel for Lautenschlaeger): I should like to ask the Tribunal, with respect to Document NO-1315 and NI-12183, to make a question mark because the Defense is of the opinion that the documents do not prove anything to justify the word "experiments," but we believe it is a question of tests.

THE PRESIDENT: Very well. That request will be granted.

MR. MINSKOFF: It might be pointed out to the Court that particularly with respect to the first document—that is 489—there has been very ample discussion as to what has been intended; there is no question but that they meant experiments.

THE PRESIDENT: Well, the documents will speak for themselves.

MR. MINSKOFF: The Prosecution offers at this time Document No. NO-265, as Prosecution Exhibit 1608--

DR. NELTE (Counsel for defendant Hoerlein): The document which has just been offered by the Prosecution is the so-called "Ding Diary," NO-265. I object to the admission of this document into evidence. I contend that the document, particularly the first page of this document, beginning with the heading, "Diary of the Division for Typhus and Virus Research at the Institute of Hygiene of the Waffen-SS," is forged. My objections to the rest of the contents of the Ding Diary I will not mention yet. But I may assume that this Tribunal knows that the alleged author of this diary, Dr. Ding, is no longer alive; that he pronounced judgment on himself. This diary, which is not an official journal, is the testimony of a dead man, which is not sworn to. In any case, the prerequisite for the admissibility of a diary into evidence seems to me to be that the dates of the entries be correct. If it is proved that these dates are wrong, are a forgery, then such a diary cannot be admitted into evidence. This proof is easy to bring. It can be seen from the diary itself.

(Dr. Nelte, cont'd)

This diary can be found at various points in the document books, and I must ask you to look at Document Book 85. You will find NO 265, there, page 15 of the English -- page 23 of the English, 9 January, 1943, by order of the chief of the Medical Service of the Waffen SS, SS-Gruppenfuehrer and Lt. General of the Waffen SS, Dr. Genzken, the hitherto existing spotted fever research station at the concentration camp Buchenwald becomes the, "Department for Spotted Fever and Virus Research".

Now if you will look at Document Book 84 again, look at page 1, you will find the heading, "Diary of the Division for Research of Typhus and Virus at the Institute of Hygiene of the Waffen SS".

This diary begins on the 29th of December, 1941. You have no doubt seen that on the 29th of December, 1941 the "Department for Typhus and Virus" research did not exist yet, but was created a year later, on the 9th of January, 1943.

This shows quite clearly and convincingly that the first page of the diary cannot be the first page of the original diary, and that this piece of paper was inserted later, with dates which were added later. At this sheet of the record I will point out to the Court that in the medical trial, a handwriting expert, Zettner, and a handwriting expert Nastvogen, Document Krugowky No. 8, Exhibit 22, gave testimony that this page was later inserted with false dates, and therefore I ask that this document, -- and I repeat that I am speaking merely of the first page, -- that this document not be admitted into evidence.

THE PRESIDENT: May I ask you, counsel, before you sit down, did the Tribunal in the so-called medical case rule on the question of the admissibility of this document?

DR. NELTE: The Ding diary was accepted but the probative value was questioned. I should like to point out that in the medical case, I had made special reference to the first page, without making the application that the document not be admitted.

THE PRESIDENT: Well now, just to clear away a bit of debris before we hear counsel for the Prosecution, it might be well to observe that this document, if there was no question as its authenticity, would stand on a different basis than that of an affidavit, so far as the right and the possibility of cross-examination is concerned. By that I mean to suggest the possibility, that I think it is justified that if this was a contemporaneous document, made by some person at the time, it would probably be admissible on an entirely different basis than where the Prosecution brings in an affidavit in lieu of bringing the witness to the stand. At least that would be true, I think, so far as any fundamental right of the defense to cross-examine, so that the fact that the alleged author of the affidavit is or is not living, under those circumstances, would not be very important.

The Tribunal would regret the necessity of conducting a collateral inquiry into facts to establish whether or not this document is admissible in evidence, although it may be necessary to do so. We are particularly concerned in what counsel for the defense has said about the document showing on its face the subject of some change as to content or some forgery.

I think we would be glad to hear what the Prosecution has to say on that subject at this time.

MR. MINSKOFF: I think that a little bit of the Court's time can be saved by merely referring to the question as it was answered by the Tribunal which had before it a full and exhaustive discussion of all of the points made now by Mr.

Nelte, plus many more points by defense counsel in that case.

The Court stated in Military Tribunal I, in its decision, on page 64:

"The Diary came into Kogen's possession at the breaking up of the camp and remained in his possession as he testified until he delivered it to the Office of Chief of Counsel for War Crimes at Nurnberg. It is manifest that the entries in the Diary were often not made on the day they bear date, but this does not mean that it has no probative value. Almost every entry in the diary is personally signed by Ding. Time and again the entries in the diary have been corroborated by other credible evidence. The defendants themselves who were familiar with the operation of Buchenwald have confirmed the entries in important essential particulars.

"We consider the diary as constituting evidence of considerable probative value and shall give to the entries such consideration as under all circumstances they are entitled to receive."

THE PRESIDENT: May we ask you, counsel, if the objections here made by counsel for the defense were urged on Tribunal I when this document was offered there?

MR. MINSKOFF: Precisely, Your Honor. The question of the first page particularly, being different from the other pages, was brought before the court, and was examined in great detail by experts and by counsel, and that question was specifically ruled upon when the Court stated that some of the pages do not necessarily bear the same date as the time of the entry. That question was considered in making its overall decision.

THE PRESIDENT: Is there anything else from the Prosecution?

Just for the moment let's ascertain if counsel for the Prosecution wishes to be heard further. If not, we will hear

from Dr. Nelte.

DR. NELTE: Mr. President, it is true, yet it is not quite true. What you have heard as an excerpt from the judgment of the medical trial, refers to the entries regarding the experiments. That is to say, experiments which began on the 10th of January, 1942.

What is at issue here, is the first page, which is of fundamental significance because it is supposed to prove that on the 29th of December, 1941, there was a Conference between the highest authorities, who decided to use Buchenwald for experiments. Gentlemen, this first page in the original bears no signature of Dr. Ding. I do not know whether you have the original before you, or whether you can see from your document book that the signature of Dr. Ding appears on the second page for the first time. At any rate, on the first page of this diary there is no signature of Dr. Ding. Secondly, in the medical trial, the witness, Dr. Kogon, and the witness Dietsch, proved that this first page, - and really there should be no need to talk about it, - was dictated later.

Also that it is quite possible that this first page had been exchanged. When I explained my objection for the first time, I did not want to go into so much detail, but it is necessary for the Tribunal to realize that we are not discussing the contents of the Ding Diary, but the first page.

The entry of 29 December, 1941 with the excerpt which Dr. Minskoff just read to you, does not mention this first page. I believe that this Tribunal can express its own opinion, independently from the judgment of the medical case, and is not prejudiced. If this Tribunal should be of a different opinion than Military Tribunal No. I, then there are exhibits to be brought forward yet or to be drawn upon from

the first trial, from the medical trial, put in evidence by me, in order to bring proof that the first page of the diary, as you have it before you, is not the diary of Dr. Ding, from the period of the 29th December, 1941.

THE PRESIDENT: Just before you sit down, counsel for the defense, we should like to say that while this Tribunal would not consider itself bound by an adjudication or ruling of another Tribunal with respect to this matter or any other matter, we would attach considerable weight to it as being persuasive of competent and distinguished jurists who had given it consideration, and we would weigh our own judgment in the light of what their conclusion had been. So much for that.

Now what I understand from your last remark, that is, without waiving your right to subsequently object to other parts of this document, your present objection may be limited to the first page of the document, and that you are asking at this time that the Tribunal exclude from evidence only the first page. Is that a correct assumption on the part of the Tribunal?

DR. NELTE: Yes.

JUDGE MORRIS: May I inquire? I am unable to ascertain from my document book just what appears on page one of this diary. That is an entry dated December 29, '41; another January 2, '42.

MR. MINSKOFF: That is correct, Your Honor. That is the first page.

JUDGE MORRIS: Does that include the diary?

MR. MINSKOFF: Your Honor that is on page 15 of the English, and goes down to the first two entries of the German.

JUDGE MORRIS: I am still confused. On page one is the entry of 29 December, 1941. Is that right?

MR. MINSKOFF: Yes, December 29, '41, is the first entry.

MR. MINSKOFF: 2

JUDGE MORRIS: What else is on page 1? January, 1942 and 5 January 1942, I believe is on there.

JUDGE MORRIS: While January, 1942 appears in my document book, there is an indication of the signature of Dr. Ding.

THE PRESIDENT: With the photostatic copy before the chair, I call attention of counsel to the fact that what it purports to be, so far as the first page is concerned, is the title at the top, the entry of

29 December, '41, the entry of 2 January, '42, and that concludes the first page of the document?

DR. NELTE: Yes.

THE PRESIDENT: And the entry of 5 January, '42, is the first entry on page 2.

DR. NELTE: Yes.

MR. MINSKOFF: That is on the first copy also, Your Honor.

JUDGE MORRIS: That satisfies my inquiry then, thank you.

THE PRESIDENT: If I may add, so far as the document itself is concerned, there is no signature on page 1, but the first signature appears at the end of the entry of 5 January, 1942, on page 2.

MR. MINSKOFF: If it please the court, may I point out that in the first trial, where the problem was considered, the very question now being urged upon the Tribunal by the Defense was very carefully considered. May I quote, for example, from the brief which the Prosecution offered to the Court on the question of the admissibility of the Ding diary. It states in part, - I read from page 10 of the brief:

"Ding also kept--"

DR. NELTE: May I say something, Mr. Minskoff? I should like to point out that this is the final plea of the Defense Counsel of Mrugowski. The closing statement after the end of the case. This isn't anything that was offered during the trial.

MR. MINSKOFF: This, if Your Honors please, is the closing brief of the Prosecution dealing with the question of the Ding diary. It states:

"The defense has contested the authenticity of the Ding diary. It is impossible to determine from the record precisely what the position is in that regard; that the diary does not consist of entries made day by day is obvious from the face of the document itself. It is rather a document which periodically summarizes the experiments which in many cases lasted several months. Ding also kept a daily diary and

work reports. These, obviously, formed a basis of the diary in evidence.

The Defense lays great stress on the fact that page 1 of the diary was typed with an older ribbon than pages 2 et seq, and hence was probably typed later. The Prosecution has no quarrel with that. Kogon gave the very obvious explanation that the page was probably re-typed when the name of the experimental station was designated as the Department for Typhus and Virus Research. At best, the typed information is now a matter of pure speculation."

I point out further the Ding diary was taken by Kogon from Buchenwald and delivered into the office of the Chief of Counsel. He testified, - Kogon, the same witness whom the Prosecution offered to bring here and was waived by the Defense, - that the document was not altered in any respect; that the document was authenticated by the Prosecution as being in the same condition as when received.

THE PRESIDENT: Then we can probably summarize the factual situation in this way, that the title in the first page is in conflict with the subsequent showing as to when the Institute of Hygiene at Waffen was organized; that the first page purports on its face, to be a different typing than the balance of the document; that there is no signature on the first page.

Is that about the situation? Is that a fair statement of what is before us so far as the first page is concerned?

DR. NELTE: The heading is impossible. I don't know whether you mentioned that, that the heading is impossible, that it could not have been entered on that 29th of December, '41, and from what Mr. Minskoff has very kindly read, I should not say that the Prosecution does not want to quarrel about this first page not having been written on the date given.

THE PRESIDENT: I was just getting ready, counsel, to ask the Prosecution if it concedes or admits that on the 29th of December, 1941, this Institute of Hygiene did not exist. Are you in a position to say what the fact is, as to when it was created?

MR. MINSKOFF: The name was changed, your Honors. We agree that the name was changed later.

THE PRESIDENT: There was no Institute of Hygiene, so-called, at this time?

MR. MINSKOFF: That's right, Your Honor.

THE PRESIDENT: I think perhaps we have developed about all that we can hope to in this present inquiry. Just a moment, please.

As we have said before, the admissibility of a document of this character stands on an entirely different - fundamentally different - basis than the rule under which the affidavits that have been offered by the prosecution rest. Generally speaking, documents of this type are admissible as what is sometimes called contemporaneous documents, like original entries in books. When evidence of that kind is offered, the very fact that they are original entries or contemporaneous entries is a sufficient showing of authenticity and regularity, as to justify their admission in evidence. Certainly, if there was an error in a date in a document that was, in fact, contemporaneous, which was the proper subject of explanation, that would not deny its admission. The troublesome thing here is the fact that, if the document bore the signature of the author, it might well be concluded that the date was in error. This bears no such date so far as the first page is concerned and it's taken out of the class of contemporaneous documents by reason of the circumstance that the language used, indicating the name under which an agency existed, shows on its face that it relates to a subsequent name by which that agency was known, rather than one that was contemporaneous with the date the document refers to. Inasmuch as evidence of this kind does rest on a different basis than where there may be a cross examination. Since it is suggested, and not denied, that the author - purported author of this diary is deceased, the Tribunal feels that we ought to adhere pretty strictly to the fundamental rules controlling the admissibility of evidence of this character; that it might be an injustice to the defense to have this first page of this document considered, in the light of the showing made. As presently advised, the Tribunal will sustain the objection of defense counsel to the introduction of the first page, subject, however, to the right of the prosecution, if it so desires and can, to supplement its proof as to circumstances bearing on the authenticity of that part of the document.

The briefs of counsel in the so-called Medical Case, and the excerpt

from the Judgment of that Tribunal indicate that that body may have had before it other facts and circumstances that persuaded it to rule as it did. We feel that before admitting the document, the same showing should be made here and, with the reservation of the right of the prosecution to supplement its proof, during the continuance of its case in chief, we now sustain the objection of the defense to the introduction of the first page of the document under consideration.

MR. NINSKOFF: If it please the Court, may we mark the document for identification pending the bringing of Mr. Kogon as a witness on the document as he was in the previous case? That will be Prosecution's Exhibit 1608, for identification.

THE PRESIDENT: That will be done.

MR. NINSKOFF: May it please the Court, the technique of marking it for identification wouldn't be too helpful at this time in view of the fact that the balance of the document, if we understand the Court's ruling, will be admissible. It is just the first page to which the objection was sustained.

THE PRESIDENT: Well, Counsel, we understood your request that it be marked for identification as applicable to the first page of the document to which the objection was directed. You're correct in that.

MR. NINSKOFF: Thank you.

On pages 42 and 43 of the English and 63 of the German, under the date 5 January 1942, the preliminary test is made to determine the surest and most practical way of infecting human beings artificially.

On page 43 of the English and 44 of the German - and 63 of the German, there is a list of the persons used for experiments including, under Item 3, 35 persons with vaccine "Behring Normal" and, under Item 4, 34 persons with "Behring Normal"- "Behring Strong". Under Item 5, 10 persons for control.

The prosecution offers at this time NI 10255 as its Exhibit 1609. It merely calls the Court's attention to the fact that this is a letter of transmittal, free of charge, of typhus vaccines to the concentration

foreign labor in the Buna plant at Schkopau, is that true?

A. That is correct.

Q. May I ask you why you ascribed to yourself this particular extensive knowledge?

A. As from November 1943, until I was arrested I was camp delegate, that is of the factory.

Q. Am I to understand you, witness, that you know extensively and you can testify about everything good as well as everything bad in that camp?

A. As far as all that is concerned which I know, yes.

Q. But irregularities, difficulties and other matters which were unfavorable with respect to the treatment of foreign laborers would certainly have come to your knowledge?

A. Not everything, but I would say the bulk of the irregularities.

Q. Now, witness, in your affidavit you are discussing the recruitment of Frenchmen.

A. Yes, I did.

Q. You go on to say that in the month of May in 1944 about 250 Frenchmen were working in the factory. That is at page 2 of the original if I may point it out to you.

A. Yes, that is about that size, I would say.

Q. And it is now your opinion that the head of the Welfare Department of the I. G. Farben had gone to France in order to recruit these 250 Frenchmen?

A. Yes. I was asked to accompany him.

Q. Now, witness, may I put the following to you: Do you know who the head of the Welfare Department was at Schkopau?

A. That was Dr. Boes. At least, I think he is the

man who was chief of the Welfare Department. Dr. Ekarius was the chief of the personnel department.

Q. If I was to put to you that according to my documents Dr. Ekarius was the man in charge, would it perhaps be possible that Dr. Boes didn't tell you the truth and informed you incorrectly by stating that he wanted to go to France in order to recruit Frenchmen?

A. I haven't quite understood what you meant by that question. Will you repeat it?

Q. According to the documents I have, is Dr. Boes the head of the welfare department and not Dr. Ekarius? Isn't it possible that an irresponsible employee of I. G. Farben at Schkopau had told you something which he really couldn't do because he was not really competent in that department? I don't want to doubt your own statement, but, after all, a man who cannot determine these matters cannot give you any legally valid statements.

A. He was not the boss. He had been entrusted with that job by Dr. Ekarius, but he was the man who left, and twice he asked me to leave with him to recruit voluntary workers, and I refused both times. I told him that he shouldn't indulge in delusions and that I wouldn't go to France to recruit Frenchmen because I myself was not a volunteer and I told him that all they would find would be non-voluntary workers.

Q. Witness, it is a matter of course that your actions are quite beyond reproach, but the fact that a certain firm recruited independently does not correspond with what has been established here up to this point. We know exactly how the procedure was handled. That was done through the Labor Commitment Office, Sauckel.

A. Yes, yes, at the beginning certainly, but in that particular case.....I repeat again.....Dr. Boes left with Herr Reinmann. Reinmann was the assistant of the personnel department. They left with two others. One was called David, another one Fritz, an Alsatian. They went to take quite a number of official photographs concerning the work and the life in the camp, and they left and asked me to go with them. Dr. Boes himself told me that they went down there to look for recruits. That's all I know.

Q. Witness, you go on to say that these people were recruited by the use of arms and that they were taken away from their homes wherever they were and that they arrived at Schkopau without any personal property. Finally you say and I quote:

"These were the descriptions which were made to me by a number of persons personally concerned, and these are the matters which I observed personally."

A. I am sorry but when I said I saw everyone of them myself, I mean, of course, the arrival of these people. That is what I have seen myself. I haven't seen them leave France. I wasn't there. I was in Germany, but I have seen the state in which these people arrived.

Q. That is what I wanted to ask you, witness. What you observed yourself is limited to the arrival, is that true?

A. Yes.

Q. Other matters which you have described were told to you by your comrades, is that right?

A. Right.

Q. Did those comrades of yours also tell you that the three people who according to their opinion went to France --

A. I have spoken of four persons, not three.

Q. Well, the four persons who according to your testimony went to France participated in this manhunt?

A. I have heard in this particular case only the name of the man, Fritz. As far as he is concerned, I am sure that he participated, but for the others, I couldn't tell you. Incidentally, Fritz was the only one who knew French very well.

Q. You mentioned the name "Metrick" just now, did you not?

A. No, I didn't. Fritz. T-r-i-t-z. Fritz, an Alsatian, A German Alsatian, that is. I don't know what nationality he was, but he sounded like German to me. He was used as an interpreter during a certain period in the personnel office for workers.

Q. What did Fritz tell you?

A. When he came back, you mean?

Q. When he came back, yes.

A. When he came back, I did not talk to him anymore. For the rest of the time he always avoided me as well as he could.

Q. Witness, then there still exists a possibility that these four persons at any rate, didn't participate in this manhunt?

A. Possibility may exist, surely.

Q. And, furthermore, that the Frenchmen who came to your camp in the year of 1944 had come from other places to Schkopau, had come through the official agencies of the German Reich?

A. No. I just told you that Fritz was one of the men who was in this search for people. Therefore, I can't

say that it was a matter of the German Government, definitely not.

Q. But you didn't speak to Tritz himself, did you?

A. No, but when these people told me about it, I readily believed them, because whatever else they told me was quite correct, and they came with absolutely nothing, not a second suit, no soap, no food, nothing. First of all, I have to point out to you that not all the 250 were concerned.

Q. And how about the others who were not encircled in that way? How were the others brought to Germany? Do you know anything about that?

A. I couldn't tell you. I am sorry.

Q. Witness, do you know when the landing of the Allies in France occurred?

A. Yes, 6 June if my memory doesn't deceive me.

Q. And if I understand your affidavit correctly, this journey of those four persons to France took place at the same time?

A. Yes, and again if my memory doesn't deceive me, Monsieur Reinmann did not come back to the factory. He was mobilized in France for the army.

Q. Witness, do you know where the department A.S.L. is situated?

A. Near Normandy.

Q. Let me ask you, witness, where did the Allied Forces land?

A. In Normandy.

Q. Don't you believe, witness, that under these circumstances it would have been very difficult, if not impossible, that these four people who left Schkopau at the time of the

landing of the Allied troops in Normandy would actually go to Normandy in order to recruit workers? Isn't it likely that they couldn't even get there?

A. They didn't arrive there in June. First of all, I told you it was in May 1944. That makes a certain difference, you know, and I don't think that the Germans were so well-informed that the landing would take place on the 6th of June.

Q. Witness, it is far for me to doubt that you actually experienced that conversation with one of the Germans at Schkopau. I merely wanted to clarify whether the facts are actually true that such a manhunt actually had taken place. Since you yourself were not there, and since you only know of it by hearsay, I should like to try together with you to clarify these matters. We can establish one thing for certain that according to what you have heard, a number of persons were picked up against their will and were brought to Germany. You don't know it exactly about the others.

A. No. No. No. No. No. That is not what I have said. All of them were brought to Germany against their will, but in some cases force was used and in other cases they were simply brought against their will.

Q. And naturally, witness, I do not try to assert either that in the year 1944 you went to Germany voluntarily; but initially I already asked you whether this, according to your opinion, was done according to German governmental offices or whether this was done upon the orders of the I. G. And at the beginning you have already stated that according to your opinion these directives were issued by German governmental agencies. There is a difference, and that is why I asked you.

A. Just a moment. But in that particular case it was definitely the I. G. Farben who sent two persons to go and get as many people as they could, and they came back. Laherpeur and Coupez were taken in it, on the other hand, and they were fetched not with a gun...but, anyhow, some people came and took them away.

Q. According to your experiences--or according to what you have heard--to whom did these I. G. men turn?

A. I think, but I am not certain, that they approached German Placement Offices in France.

Q. You are referring to the same labor offices which brought you and your comrades to Germany?

A. No; I am referring now to the Placement Offices. They had nothing to do in my particular case, not either in the case of my comrades who were part of the AGE Group, 1942. This AGE Group had been mobilized altogether to leave as workers for Germany.

Q. Witness, who mobilized you and your AGE Group?

A. The Vichy Government, under the pressure of the Germans.

Q. And quite apart from that there were some labor offices in existence--labor exchanges?

A. Surely these fifty voluntary workers to whom I have referred, they were sent by the labor exchanges.

Q. And who was behind these labor exchanges?

A. I am sorry, but I was too young to look into that question. I really had no desire to go to Germany.

Q But you don't exclude the possibility that these may have been official German governmental offices?

A I am sorry; I cannot tell you.

Q At any rate, witness, let me establish once more that, according to what you have heard, the persons who went from Schkopau to France turned to these labor offices?

A I assume that they did—I assume it.

Q Can you give me the name of one of your comrades who, at that time, gave you this description regarding this manhunt and regarding the way your comrades were picked up?

A Unfortunately, I am in no position to do so. I told that already to the Prosecution. I can't remember all these 250 names, especially those who were the latest arrivals. But I can give you the names of a few comrades who you might be able to find and who might be able to testify as to what I have said.

Q Would you be good enough to give me one of these names?

A Yes. You have Herbert, who, for instance, must have heard about it. You have Coupez—two brothers, one of whom died in a concentration camp. Unfortunately, you won't be able to interrogate that one.

Q Thank you. I think that will suffice. You are stating matters with respect to the work and the care. You say that the work hours fluctuated between 56 to 72 hours a week. Witness, I have been informed—and I ask you to check my information—that during the last years of the war a so-called shift system had been instituted, according to which one worked for 12 hours again, etc. This in itself would cover what you have told us about the work hours. But then you would have to calculate a twenty-four hour rest period. Is that true?

A It is true, in effect, that there were persons who worked in that shift of 12-hours-on and 24-hours-off, but the figures I gave of 56 and 72 hours are the extreme limits. Not everybody worked 72 hours, and not everybody worked only 56 hours. And then I have to add

that in 1944 the people who had to work 12 hours a day and were off for 24 hours had four hours per week added and, afterwards, eight hours, which would bring you to 64 and 72 hours. As I told you, those were the extreme limits.

Q Witness, may I ask you whether the description which you are giving us now held true in the same way of Germans and of your comrades?

A As far as the 12-hours-on and 24-hours-off system is concerned, yes; but as far as the supplemental hours, the overtime, is concerned, I don't remember. But I think there must be a way to trace that back.

Q But otherwise the work hours tallied in the case of Germans and Frenchmen?

A Yes, if you except those 8 hours overtime; yes.

Q Apart from these 8 hours? I am not quite clear what you mean by "eight hours."

A Well, here is what the situation was. I don't know what month it was, but in 1944--sometime in 1944, at least, the decision was posted, was made known to me, that the French and the foreigners, that is, among others, a few Italians, should, during their 24-hours off, work, at the beginning, 4 hours per week. Maybe you understand it now. I am speaking of those overtime hours. I am speaking of the period after 1944, not before that.

Q That is a very short period before the collapse, isn't it?

A No, I wouldn't say so. I would say one year. May 1944 until 1945: that would still make it a year.

Q Witness, you go on to speak of 1,600 Italians who, in the year 1943, were sent to Schkopau, page 3 of the original of your affidavit.

A Yes, 1500 again is only an approximate figure. Those were the Italian prisoners of war, what the Germans used to call "The Badoglios."

Q Witness, did you see in what condition these PW's were in, when they arrived at Schkopau?

A They were in pretty bad condition then, but they didn't improve; they remained in that bad state.

Q That is what I wanted to ask you about, witness. In your affidavit you say that the nourishment of these persons was very bad. Did it remain that bad, or was it improved after certain initial difficulties had been overcome?

A Until the moment they were converted into a civilian status of Free Workers they continued to eat as badly as before. They hurled themselves on the rasts of tinned food and with their fingers they would grab out the food like under-nourished beasts.

Q Witness, to whom were these Italians subordinated initially, before they became Free Workers?

A When they were made prisoners, to the Armed Forces doubtlessly.

Q Thank you. Witness, you go on to say, and I quote: "That the French workers were neither allowed to change their place of work nor to return to France."

A Well, I have to explain that there was the authority of the plant leader who had the right to change their work occasionally, and I speak of going back to France; I am not speaking of the holiday permits granted between December 1944 and February 1945. I mean the return to France after the contract had expired. That is in June 1944, as far as I know.

Q You go on to say that there was a contract which provided leave. Is that true?

A No; I was speaking of the contracts of the few voluntary workers. They had signed contracts which were for a limited period of time.

Q Was there provision for leave in this contract?

A I couldn't remember that anymore. I am sorry, I don't know it.

Q Would you consider that this was possible, if I were to tell you that we have documents according to which so-called leave trains were leaving in April 1944 for France?

MR. SPRECHER: Mr. President, that is calling for speculation. Is it important to Your Honors whether or not the lawyer says this is

true, and then asks the witness if that would be possible?

THE PRESIDENT: Well, that is getting too far into the field of speculation, I think.

The objection is sustained.

BY DR. HOFFMANN:

Q Witness, you also mention that the entering of and the departing from the plant was only possible by the use of a pass?

A Yes.

Q Was this also true of Germans in the same way?

A They had passes, just as we had. There was a slight difference though. I mean there was a small mark on it.

Q But they had to show the pass in the same way as you did when leaving and entering the plant?

A Yes.

THE PRESIDENT: The question was not answered.

A I said yes.

Q Witness, you were speaking of medical care. Was there one factory physician? Were there more physicians? How were these matters settled at Schkopau?

A There were several physicians, and Dr. Kolb was their chief. There his assistants were Dr. Bleinstein and....I just can't remember it, but I think he had an American mother. I don't remember the name. I will probably stumble on it again.

Q Were you, yourself, ever sick? Were you ever treated?

A I was at the hospital twice, that is, the factory hospital.

Q Witness, did one physician inspire more confidence than another?

A Oh, yes, certainly this third one, at least. I can't remember his name. He inspired more confidence.

Q If you then say that the factory physicians did not show the basic humane requisites, you do make a difference between the individual physicians. One was better than another, and it depended on the personality of the individual doctor?

A Yes, but, after all, they were all under Dr. Kolb's orders, and this third doctor--the name I can't remember...that is annoying, I can't remember that name. But I can give you some very specific examples of cases of tuberculosis that were not announced as--

THE PRESIDENT: If you please--

A --tuberculosis cases. I can give you the case of the man Crollat and the man Leroy--

THE PRESIDENT: Mr. President, you have already answered the question. If counsel desires that information he can ask you another question.

The Tribunal at this time will rise for its recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

CROSS EXAMINATION - continued

JOKI PROSSARD

BY DR. HOFFMANN:

Q Witness, before the recess, we were talking about the medical care; do you remember?

A Yes, I remember.

Q What was the medical care like, generally speaking? What kind of a judgment can you give us on that?

A So far as the diagnosis is concerned, or do you mean the actual care given to the sick person who has been recognized as sick?

Q How you were actually treated.

A I am speaking of persons who had been recognized as sick. In those cases, they were well treated in the dispensary.

Q Yes, now you go on to talk about punishments. You give the name of a man here, Lehrmundt; do you recall that?

A Oh, I remember that very well.

Q Now witness, if I put to you that this Lehrmundt actually had an independent position on the basis of general regulations, could that be true?

A In my statement I have said that I did not know exactly who paid this Lehrmundt, and I did not know exactly what agency he belonged to.

Q When you leave the possibility open that he was not a member of I.G. Farben.

A I have no proof that he actually was a member of the I.G.; but I have no proof either that he was not.

Q You don't know.

A No, I don't know.

Q You also said something about the labor training camps, witness. Is it true if I tell you that these labor training camps did not belong to Farben?

A Will you please repeat that; I did not get the sense of that.

Q You mentioned the labor training camps in your affidavit. Is it true if I assume that these camps did not belong to Farben?

A I do not know to what point the I.G. helped or did not help in the construction of the camp Spergau, which was next door to it, but what I stated was that the Buna works, loaned a block to this camp. That indicates certainly that the relations between the two installations were very intimate.

Q Witness, we will come to this question later. Can you imagine if I put to you that the I.G. Capo who was in charge of these camps, was forced on the basis of a general law, in the case which you describe in your affidavit, to confiscate this block against the will of Farben; do you believe that to be true?

A I cannot answer that question. I mean, I am in no position to do so. I do not know.

Q Apart from this one incident which you mention in your affidavit you cannot say that these labor camps belonged to Farben? They might just as well have been under the Gestapo?

A Certainly they were directly subordinated to the Gestapo, but the interesting point was to know who and what agency financed these establishments.

Q But you have no evidence that the I.G. Farben financed them?

A I have no direct reason to believe that, but unfortunately my recollection is very dim. I had a conversation with the chief of the administration of the camp of Spergau once, but I do not want to give any wrong indications. It is a great pity that I do not remember.

Q In other words, you do not know, witness?

A I have my personal opinion, but so far as knowledge goes, I do not know.

Q Now, witness, to sum up, may I ask you, everything that you have stated in your affidavit, is everything that you can say about the treatment as to foreign workers in Schoopau; is that correct?

A Mainly I have spoken of the life in the factory itself, but I am

entirely at your disposal for any questions you might like to ask.

Q Witness, let us consider what it meant for you as a Frenchman to come to Germany, and let us also consider what you experienced in Mauthausen. If we put this on one side, I should like to ask you on the other hand, always remembering that you were forced to come to Germany, - was life in Schkopau otherwise bearable?

A Bearable, yes, because we knew how to handle things. We had certain privileges because we had a few good people like Oberlagerfuehrer Kolbe.

Q Witness, let us assume that you had not had to work for Germany; would you have remained in this camp or in the Schkopau factory as a free worker, or would you have quit your job?

A What case do you mean? I don't remember that.

Q Witness, if you had been a free worker, do you understand what I mean by that; in that case, would you have continued to work in Schkopau or not?

A As a free worker; you mean as a German, in peacetime?

Q Yes.

A And if I had really found a job as a chemical engineer, as I am now? Under those conditions, yes, I would have considered going on working, if you do not consider the question of nationality.

DR. HOFFMANN: Thank you. No further questions.

THE PRESIDENT: Is there any further cross-examination of this witness, please?

BY DR. GATHER (Counsel for the defendant Ambros):

Q Witness, you said that you came to Germany against your will?

A Yes, that is what I said.

Q Was it an accident that you came to Schkopau?

A It was an accident. At Dijon I asked that I be sent to a chemical industry.

Q Witness, perhaps I may refresh your memory a bit. Is it true that your father knew the defendant, Ambros?

A Yes, that's correct.

Q Is it true that your uncle knew the defendant, Ambros?

A Yes, that's correct too.

Q Is it true that at the time when you came to Germany, the defendant Ambros corresponded with your Uncle and with your father?

A That's likely.

Q Witness, considering the circumstances would you not consider it likely that your family wrote to the defendant Ambros about what was to be done with you in Germany and that perhaps that was the reason why you were sent to a plant which Dr. Ambros was in charge of?

MR. VAN STREET: Just a moment. I object.

THE PRESIDENT: The objection is overruled.

BY DR. GATHER:

Please answer the question.

A Certainly not. When I left my father, so far as I know, did not know where I went. Even I didn't know where I went, and this was quite an accident because only at Erfurt, we were told our destination, our final destination. It is quite possible that after I arrived down there, Mr. Ambros knew where I was. That is quite possible.

(Dr. Gather)

Q. Witness, since it did become known that you were there, do you consider it impossible that your relatives discussed you with the defendant Ambros?

A. It is certainly possible.

Q. Witness, would you have considered your work in a laboratory in Schkopau an improvement, that you were in a better position than the other French workers who came to Schkopau?

A. Let me think it over for just a minute. I do not want to answer off-hand. It is a fact that there were several chemical engineers arriving at Schkopau, and I was the first one to be employed in a laboratory.

Q. Witness, did you wonder at it, - about the connection which you have admitted between your father and the defendant, Dr. Ambros?

A. Between my father and Dr. Ambros you mean?

Q. Your father, yes. I was including your uncle among your family.

A. What my uncle did I do not know.

Q. Thank you. Let me continue my questions. Did you not wonder why they did not succeed in getting you released from labor service? Could you follow my reasoning that Farben even in circles which are considered influential, did not have any way of preventing labor service, but had only a little influence on where one worked in Germany?

MR. SPRECHER: May we have just a minute. I think we should object to that. I want to consult with Mr. Van Street.

MR. VAN STREET: May it please, Your Honors, I endeavored to object a while ago, and I did. It was overruled. I think that this business of family connections is going entirely too far. I cannot see where it has any bearing upon the case. This man is testifying not only to the conditions

of the plant so far as he was concerned, but conditions obtaining so far as other workers were concerned.

Now let us assume maybe he was in a preferential condition so far as he personally is concerned, but at least he was in position to observe what was going on, so far as the other French workers were concerned.

I think we are going entirely too far afield to bring all of this business in about his family and his uncles.

THE PRESIDENT: Counsel, don't you think that would be pertinent as affecting the credibility of this witness, and the weight to be given to his testimony by the Tribunal, conceding that it is not directly connected with his affidavit, but his associations and connections with any of these defendants? His relationship or the relationship of his family are matters that might bear directly upon the weight to be given to his testimony, and the color or the matter of his interest or lack of interest in the subject matter of the affidavit?

MR. VAN STREET: May I address the court?

THE PRESIDENT: Yes, surely.

MR. VAN STREET: May it please your Honor, if you want to go into the matter of credibility, I quite agree with you. I think it will increase the weight of his evidence, so far as this particular situation is concerned, if it is brought out that he knew or his family knew Ambros, one of the defendants in this case, but what I was going to say, I think we are just simply going far afield, and the Prosecution up to this time has not been able to indulge in those matters.

THE PRESIDENT: It is quite different on cross-examination. There is a field of proper cross-examination that goes beyond the scope of the examination in chief. Insofar as it does bear upon the credibility of the witness, or the weight to be attached to his testimony. I think it is

certainly true that an inquiry of this character is largely within the sound discretion of the hearer, and it should not be carried to the extent of becoming the subject of the inquiry in chief, but it does occur to me that within reasonable limitations, it would be proper to show the relationship, if there was any relationship, between this witness and the, -- any of the defendants.

The present objection is, --

Now it is called to my attention, and I think it is correct that the last question perhaps is objectionable, because it does not call for that relationship, but gets into the field of an opinion or a conclusion of the witness.

Counsel is correct as to that, and also that the collateral inquiry, that only goes to the credibility of the witness, and the weight to be attached to his testimony, ought to be kept within reasonable limitations.

MR. VAN STREET: May it please your Honor, I want to make my position perfectly clear. I would have no objection whatever if counsel wanted to ask this witness if he knew personally, whether or not his father or his uncle had had correspondence or conversations about his position; but that has not been asked in that manner; but that would put it in a way that the witness could answer it.

THE PRESIDENT: That point, I think, is well taken, as to the form of the question.

DR. GATHER: May I say something?

THE PRESIDENT: Yes.

BY DR. GATHER:

Witness, I believe I understand you to say that you considered correspondence with reference to you personally between your father and the defendant Ambros, possible? Do you know anything about it?

MR. SPEICHER: Objection. Whether it is possible or

not, is no concern of this court.

THE PRESIDENT: That is in the nature of a preliminary, and that part of the question may be disregarded, because the latter part of the question is certainly proper, as to whether he knows personally about such a correspondence; whether he knows anything about it.

THE WITNESS: In my opinion, certainly ---

THE PRESIDENT: Mr. Witness, we would not be interested in your opinion, but as to whether or not you know as to any correspondence that passed between your father and the defendant Amoros.

THE WITNESS: As far as industrial relations are concerned, certainly, obviously.

THE PRESIDENT: The question was any correspondence?

THE WITNESS: I assume that there was correspondence, but I never saw any letters myself.

THE PRESIDENT: That is an answer to your question.

BY DR. GATHER:

Q. Witness, did you establish contact with your father and ask him to try to have you released or to try to get out of Schkopau?

A. No, I didn't.

Q. May I ask why not?

A. Because if I had wanted to do that, I could have done it already when I went to France on furlough to get one of my comrades back but, at the time, I had a position which the gentlemen of the I.G. didn't like. The first two weeks when I was appointed a delegate they didn't want to accept me as a delegate and I didn't want to be a traitor to my comrades by trying to get out of it.

Q. Then may I conclude in your case that you were more or less a volunteer in going to Schkopau?

A. Not at all. Once I was down there and once I had been appointed delegate, then you may say I stayed as a volunteer, but don't try to twist what I say.

Q. But you remained in Schkopau voluntarily?

A. To remain voluntarily is very difficult. Perhaps once I was down there, if I had pulled strings I might have been able to get out of it.

Q. Thank you.

In your affidavit you say that your arrest by the Gestapo had been the result of actions of Lehrmundt and that fifty other people were also arrested. On what do you base this testimony? That is on page 2 of your affidavit, the third paragraph from the end of my text. Page 85 in the English book.

A. I would like to get the exact wording of my statement first. Just a minute.

Q. You're talking about Lehrmundt. Page 4 of the original.

A. Oh, I see. Page 4. I speak of Lehrmundt.

Q. And then you say:

"All applications for punishment went through his office. In November, 1944, fifty of my comrades were arrested following my own arrest."

A. My own arrest was not carried out by Lehrmundt. I told you it was the Gestapo that came to fetch me, but the fifty comrades of mine were gathered by Lehrmundt and his people - German civilians. I wasn't talking of my own arrest.

Q. How do you know this was the case? How do you know what you say was true?

A. That I was arrested by the Gestapo?

Q. No, that it was Lehrmundt...

A. I heard it from my comrades who came back from prison and told me.

Q. From hearsay?

A. Not at all. I think that if they had been in jail over five months they would not come and lie to me. They had no interest in lying to me.

Q. I didn't say that, witness. Please answer my question. I understood you to say that you learned that it was Lehrmundt through one of your fellow prisoners.

A. I didn't say through one. I said through many.

Q. Well, all right, through many. In your case too?

A. No, not in my case.

Q. Is it true that in your case the denunciation was by a Frenchman?

A. No, not by a Frenchman. By a Dutchman.

Q. May I hear his name?

A. Von Erich.

Q. Do you know whether Farben, as a result of the connections with your father, exerted its influence to get

you out again, and other German circles too to get you out of Schkopau?

A. I know one thing for certain because I was told that by Oberleutnant Berg who was the investigating magistrate in my case that Dr. Ekarius went to prison and asked to see Lieutenant Berg himself.

Q. In order to.....

A. I'm sorry. I wasn't there when they were talking together.

Q. Witness, is it true that, because of your name and as a confidential representative of the Frenchmen, you had a certain special position in the plant?

A. Will you repeat that again? I don't know quite what you mean.

Q. Is it true if I assume that, because of your name and your position as a representative of the Frenchmen, you had a certain special position among the foreign workers?

A. Yes, but not more than the other delegates too.

Q. Thank you.

Then, since you mention the other delegates, who appointed you a representative?

A. The official delegation of the French at Halle. For two weeks, I.G. did not recognize me.

Q. What do you mean by I.G.?

A. At the time I went to see Dr. Boms and he told me that they didn't want me as a delegate; that they were quite satisfied with the old one.

Q. Is it true that the men in charge of the plant at Schkopau - that you talked to them frequently? For example, Dr. Wulff? You know Mr. Wulff?

A. I know Mr. Wulff, but I was never to see him. I discussed matters with him.

Q. Do you know Dr. Biedenkopf?

A. By name, yes, certainly. I had dealings with him two or three times.

Q. Do you know Dr. Eckarius?

A. Yes, I do.

Q. Is it true if I may say that you had social contact with these men when celebrations were put on by the French foreign workers?

A. They represented the I.G. as I represented the French. It was not like a personal relationship at all.

Q. Did you discuss with these gentlemen the circumstances which you describe in your affidavit?

A. They saw them every day. The conditions, I mean.

THE PRESIDENT: Mr. Witness, just answer his question. Did you discuss it with those gentlemen? The conditions that you describe in your affidavit. You can say that "yes" or "No" or say you don't remember and save some time.

BY DR. GATHER:

Q. I didn't understand the answer.

A. I would like you to repeat the question.

Q. Did you talk to these gentlemen about the conditions which you describe in your affidavit?

A. Yes, if I can give you an example....

THE PRESIDENT: You have answered the question when you said "yes".

BY DR. GATHER:

Q. Can you give me any specific conditions which you discussed with these men? Did you complain to them?

A. I'll give you an instance.

THE PRESIDENT: Just answer the question first. Did you or did not not complain?

THE WITNESS: Yes, I can give you a specific example.

BY DR. GATHER:

Q. The certain influence which you just mentioned, did you throw that into the scales and did you expect anything from it in respect to yourself?

A. For certain matters certainly I might have succeeded.

Q. If you had done so or.....

A. I said for certain matters.

Q. Did you say you were successful or you would have been successful?

A. Once in a while I was successful. Once in a while I wasn't. You have to understand my point. I couldn't split my personality into halves. I couldn't be the delegate on one hand and then Monsieur Fressard on the other hand. I was the two of them together. You ask me about things that happened three years ago, with personal ideas and views on that.

Q. No, I'm merely asking you about a fact. Whether you did so or not, because, after all, you have given us an affidavit on these things that happened three years ago.

A. I have been able to make a statement on these matters because I remembered them very well, but in what frame of mind and what moment.....

THE PRESIDENT: It is not proper for you to argue with counsel and you need not feel obligated to make explanations of your answers. Just answer the question, if you can. If you can say "yes", say "yes". You can say "no", if you want to. If you're asked about something you don't remember, just say so. Leave it to counsel to ask the next question. We're taking too much time in your cross examination here. Your answers are too involved.

BY DR. GATHER:

Q. Witness, I shall repeat my question. Did you use your influence, which you mentioned, in this sense? Did you try to exert influence with any of the leading men in any form?

A. Certainly, I tried to influence Dr. Eckarius.

Q. Successfully?

A. I told you that it depended on what case was involved.

Q. In what cases were you successful? If you don't know.....

A. I don't remember the individual cases.

Q. Do you know why you were unsuccessful in other cases?

A. Dependent on the good will of these gentlemen.

Q. Whether you were successful or not, in your opinion? Is that your opinion or not?

A. That, of course, depended also on the way in which I presented the case, certainly.

Q. The way in which you presented the case? Did you play a public role in the camp life? Did you appear publicly?

A. Yes.

Q. In what capacity, generally speaking?

A. In my capacity as camp liaison man.

Q. Were you able to bring things up for discussion publicly?

A. Yes. I've been able to make speeches publicly.

Q. Then you would no doubt remember an article from January, 1944, in the Nachrichtenblatt of Schkopau, entitled "We Frenchmen in Germany"? You would acknowledge it as written by you?

A. Certainly.

Q. May I offer this magazine as Ambros Exhibit #12, for

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identification?

THE PRESIDENT: That may be done.

THE WITNESS: Yes, I am the man who wrote that.

Q Is it true, witness, that you were especially interested in the sport activities of your comrades?

A Yes, that is correct.

Q Do you call a sport festival of the French foreign workers in the fall, September 1944?

A Yes, September 1944, that is right.

Q I should like to show you some pictures again to see whether you recognize them.

A Go ahead. Yes, I recognize them.

Q Was this a French team?

A Yes.

Q And here is another picture. I offer these as Ambros Exhibits 13 and 14. Do you see yourself on the second picture? Is that you?

A Yes, yes I am the 5th in that range.

Q Were these occasions supported by the management of the plant?

A These sport manifestations certainly. We always passed through channels of the camp chief.

Q For other types of events, too?

A Yes.

Q Did you not see in this evidence of good will on both sides for collaboration?

A Would you repeat that question?

Q Did you see these events in which, as you say, the leading gentlemen of I.G. participated -- as far as I am informed, to which they were invited by you -- did you see in this evidence of mutual collaboration?

A That is not a proof of mutual collaboration on my part. I tried to obtain as much as possible for the French, while the Germans were thinking that a machine works well only if it is well greased.

Q Witness, when I say "Mitarbeit", I don't mean collaboration, I mean cooperation on a friendly basis, not as a political expression, but I am referring merely to the operation of the factory.

From this point of view, you answer the question in the affirmative?

A I have answered that question already, I think.

Q Perhaps I did not hear your answer. Did you say yes?

THE PRESIDENT: You may answer it again. It calls for a yes or no, answer.

A It was a cooperation, we were obliged to work together with them.

Q Were you forced to put on such games, etc., and invite the Farben people?

A Well, we were forced indirectly.

DR. GATHER: Thank you. No further questions.

THE PRESIDENT: Counsel, you had better pick up your exhibits. Any further cross examination? Any re-direct examination?

MR. VAN STRIET: Just a few brief questions, if the Tribunal please.

REDIRECT EXAMINATION

BY MR. VAN STRIET:

Q Mr. Frossard, you refer in your affidavit, in the paragraph entitled "recruiting" among other things, to 50 volunteers. Can you or can you not tell us something about this group, that is to say, who may or who may not have composed it?

A They came as volunteers.

Q Well, can you tell us or can you not something about the people who composed that group?

A There were about 10 per cent who came as volunteers. They thought they would get something good there. The rest, of course, was composed of people who were wanted in France, for instance, Mrs Oriol.

Q Mr. Frossard, I don't quite understand what you mean by people who were wanted in France.

A I am sorry, I expressed myself in an ambiguous way. These people were the scum of France, and they gave us the most trouble, both to the I.C. and to myself. They were really the scum except for those 10 per cent I mentioned.

Q Now, Mr. Frossard you have referred your testimony on cross examination to free workers. Could you explain to us what you mean by that term, free workers?

A If I speak of free workers, they were the workers of the French Compulsory Labor Service, the STO.

Q Do you mean by free workers, workers who were at liberty to go and come as they pleased, that is, they could have gone back to France if they had so chosen?

A No.

Q Will you please clarify that?

A For instance, to be able to travel in Germany, they had to have a pass, and after August 1944, they were not allowed to go to Hulle and they had to be back in the camp at 9 o'clock in the evening.

Q In other words, is it proper summary to say that these free workers, so-called were still obligated to work for I.G. Farben but had additional liberties or more liberties, let us say, than the average involuntary worker?

A No, it was the same.

Q Now, Mr. Frossard, as the representative of the French workers, whom did you generally approach when you had a complaint as to treatment or when you wanted to get something done for the French workers?

A As far as the camp was concerned, I approached the senior chief camp commander. As far as the factory was concerned, Dr. Boos, Dr. Eckarius, Dr. Langere or whoever it was, depended on the case.

Q And who was the chief of the camp?

A The senior camp commander, Vollbach.

Q Was Mr. Vollbach or was he not able to help you in your requests?

A He did quite a lot of things in order to help us. He helped us indirectly to organize all these sport festivals and other things, I think that he once in a while would encounter difficulties, because he would tell us, "Oh, these people of the I.G."

MR. VAN STRAAT: That is all.

THE PRESIDENT: Any further of this witness?

DR. HOFFMANN: Hoffmann, for Ambros.

RECROSS EXAMINATION

BY DR. HOFFMANN:

Q Witness, you spoke of 50 volunteers who came to Schkopau, is that true?

A Yes, about 50, I would say.

Q And you say that there were a number of persons who were wanted in France?

A Yes, there were some, some of them were wanted by the police in France, like Oriol, who later on enlisted in the Waffen SS or somewhere. He was a member of the PPF, Party Popular in France. It was a Fascist party in France at the time.

Q There were people who wanted to hide in Germany, is that right?

A Not only that they wanted to hide, they had all the interests to leave, to leave France. I don't know exactly what the French law at the time was concerning these Fascists.

Q But you said that you had a great deal of trouble with these people yourself?

A Yes. I had. The I.G. had some trouble, too, which shows that their morality wasn't exactly on a high standard.

Q Is it possible, witness, that a doctor might reject a man because he was merely pretending to be sick - might reject such a man because he was only pretending to be sick?

A Can I have that again, please?

Q Did these people like to work or not?

A Generally speaking, they were not exactly inclined to work.

Q Is it possible that one of these people would pretend that he was sick without actually being sick?

A Everything is possible for everybody.

Q Is it possible that your testimony about the medical care and the rejection of patients refers to these people?

A Not at all.

DR. HOFFMAN: No further questions.

MR. VAN STREET: No redirect, Your Honor.

DR. GATHER: Dr. Gather for the defendant Ambrose.

BY DR. GATHER:

Q Witness, in the redirect you mentioned the volunteers who also existed. In general, they were scoundrels, I believe you said scums?

A Yes, that is what I meant.

Q Witness, I don't know how much insight you had into conditions because of your family connections. I have a teletype here of Francolor of 8 July 1942 -- according to my information, that was at a time when your uncle was in Ludwigshafen -- addressed to Ludwigshafen, Pour Frossard signed "Francolor." And it reads "Alchymist Engel iginpe treuse et un volontaires et un chemiste Linder."

MR. VAN STREET: Just a minute, please, could Counsel state please whether that wire is for the witness' uncle or is it for the witness? I am not clear on it.

DR. GATHER: I hadn't finished my question.

BY DR. GATHER:

Q. Witness, if this telegram came from Francolor at a time when your uncle was at Ludwigshafen, is the sender of this telegram perhaps your father?

A. Yes.

THE PRESIDENT: Wait a moment. Wait a moment. He probably could not answer that unless he knows something about the telegram. If he knows anything about the telegram, he may testify about it.

The objection is sustained.

BY DR. GATHER:

Q. Witness, do you maintain that there was some, applying to volunteers? Would you refer that also to the workers went by Francolor? According to my information, they were outstanding experts.

MR. SPRECHER: Mr. President, there is nothing in evidence that there was a voluntary sending of workers by Francolor, and we object to such type of assumptions here.

THE PRESIDENT: That objection is sustained. There may be some proper form of inquiry, but this question doesn't suggest it. Counsel ask another question.

DR. GATHER: No further questions.

THE PRESIDENT: Very well, any further examination of this witness? Anything from the Prosecution?

MR. VAN STREET: No, Your Honor.

THE PRESIDENT: Anything from the Defense?

The Tribunal will declare this cross examination concluded and the witness is excused.

Does the Prosecution have anything that would consume five or

six minutes here to keep from wasting time?

MR. SPEECHER: Mr. Minskoff could go on with documents, or I could correct the record in a couple of places.

THE PRESIDENT: Suppose you make your correction on the record if you are ready for it, and we will start fresh on something else in the morning.

MR. SPEECHER: Mr. President, in connection with Document MI-8156 which was submitted as Prosecution Exhibit 1229, Document Book 62, English, page 14, German, page 18, we have submitted errata sheets, and at the request I believe of the Defense in this case. It may be on our own initiative. I am not quite certain, but in any event, the errata sheets should be put in just before that document.

Now in that same document Book 62 we have had distributed to the Court and to the Defense Center an additional excerpt from Document MI-8358 which was introduced as Prosecution Exhibit 1235. That is in the English Document Book 62 at page 24. The German book already contains this excerpt. There is a deficiency in the English, and you should merely substitute the document I am handing now to the Secretary for the MI-8358 excerpt which you now have. All of the documents I have mentioned have been submitted to Your Honors and to the Defense some time back.

The next document I would like to offer is MI-9288, and that may go in as Prosecution Exhibit 1622. This is an affidavit of Guenther Frank-Fahle dated 5 August 1947, and it quotes extracts from the minutes of the Commercial Committee concerning the subject of France. The document speaks for itself. It is submitted in connection with showing how extensively the knowledge concerning the "negotiations" and the activities in France were brought to a Commercial Vorstand member.

THE PRESIDENT: Can you indicate in which book it naturally belongs?

MR. SPEECHER: Yes. I beg your pardon. That should be inserted in Document Book 57.

Then as the next document which we would like to offer in evidence we have NI-9360, and that may go in as Prosecution Exhibit 1623. This is another affidavit of Frank-Fahle, Secretary of the Commercial Committee, on the 6th of August, 1947, which gives extracts of the minutes of the Commercial Committee insofar as they concern Denmark, Norway, Sweden and Finland. We only offer them in connection with the entries therein concerning Norway.

THE PRESIDENT: And what book would you put that in, please?

MR. SPRECHER: Would you put that in Book 65, please.

Mr. President, at the time the Prosecution offered Exhibit 1120—that is NI-11376 — a document found in Document Book 54, English, page 87, German, page 147, the Defense objected, and the Prosecution acquiesced in a statement that Exhibit 1120 was not authenticated by an affidavit, of—

JUDGE MORRIS: Pardon me, was not your last one 1623?

MR. SPRECHER: Yes, Judge Morris. I am awfully sorry. That was my mistake. 1624.

NI-12396, Prosecution Exhibit 1624, is an affidavit by Jiri Marek which refers to Prosecution Exhibit 1120 and authenticates it and states the circumstances under which Exhibit 1120 for identification was created and sent to our office.

THE PRESIDENT: Then Exhibit 1120 is now ready to be received in evidence?

MR. SPRECHER: Yes.

THE PRESIDENT: It will be so ordered.

MR. SPRECHER: I might say that in connection with the Marek affidavit just introduced, this concerns records which Marek went over and is testimony how they were to be found, and it is the Prosecution's view that that is a typical case for interrogatories in case anything has been omitted which might be thought to be relevant in the Defense's opinion.

Now we previously offered a document, NI-9266, as Exhibit 1166. That was in Document Book 56, English, page 38, German, page 74. That was an excerpt from the Judgment of the French Civil Court dated the 13th of March, 1946, which declared null and void the transfer of the French shares of Vinnica which were transferred to I. G. Farben.

We would now like to ask Your Honors, if we may withdraw the excerpt and introduce instead NI-9266-A as a new exhibit number which will be Prosecution Exhibit 1625, and that will contain the preface to the decree which will further indicate, I believe, the nature of the decree, and, as I recall it, this is being done at the request of one of the Defense Counsel.

THE PRESIDENT: Then it may take its place in the same book, that is, 56.

MR. SPEECHER: Yes, if you would please put that in Book 66 at page 39.

THE PRESIDENT: Is that 66 or 56?

MR. SPEECHER: 56 at page 39, and in the German at page 76.

THE PRESIDENT: Yes.

MR. SPEECHER: And then may we withdraw Exhibit 1166, Mr. President?

THE PRESIDENT: The Prosecution has withdrawn from the evidence its exhibit numbered 1166.

MR. SPEECHER: And any remarks that were made concerning Exhibit 1166 in the transcript should now apply to the Fuller document, namely, Prosecution Exhibit 1625.

Now I would also like to offer NI-8398 as Prosecution Exhibit 1626. This is a letter from Farben's director, Eckert to Schwab, one of the trustees in Poland in connection with the Vinnica matter. This letter is dated the 12th of February, 1941. At the time the Prosecution submitted Exhibit 1161, that is, NI-8400 in Document Book 56, English, page 29, German page 63, the Defense asked us to clarify what

equipment was being referred to in that affidavit. Mr. Newman at the time said it appeared clear to him it was Vinnica equipment. The document we now have offered, 1626, we think makes that very clear, and it is submitted for that purpose.

THE PRESIDENT: Then it supplements Exhibit 1626 rather than replaces it, is that correct?

MR. SPECHER: I am sorry. Exhibit 1626 supplements Exhibit 1161.

THE PRESIDENT: 1161, yes.

MR. Sprecher; And it should be slipped in the document book beside it.

THE PRESIDENT: Very well. Now, Mr. Prosecutor, time is almost up. How many more of these do you have?

MR. SPECHER: I have only three more, and it will take me about five minutes, and I will be able to withdraw one affidavit more of two affidavits I am putting in.

THE PRESIDENT: Go ahead.

MR. SPECHER: NI-12395 I would like to offer as Prosecution Exhibit 1627. This is a letter from I. G. of the 26th of May, 1944, concerning the urgency of transferring certain Wola equipment to an I. G. Farben plant in Germany, and that letter was written to the trustee administration for the chemical factory Wola in Poland.

The next document is NI-12394. I would like to offer that as Prosecution Exhibit 1628. This is an official notice of the property control officer, Military Government, Lt. Garlock, of the 8th of February, 1946, declaring that certain property is not to be touched or mixed, and it refers to the machinery and equipment contained in boxes assigned Wola and then the Polish name of the city which you will note is exactly the same name as that in the prior document just offered where two representatives of I. G. were writing concerning Wola and the machinery at this place.

DR. VON KELLER: Dr. von Keller for the defendant von Schnitzler.

Mr. President, as far as I am informed, we have not received these documents yet. I am, therefore, unable to decide whether I will object to any of these documents. I do not want to delay the submission of these documents by insisting on the twenty-four hour period.

THE PRESIDENT: Counsel, would it be agreeable to you for the sake of the formal offer and record to allow the Prosecution to go ahead and make its offer of these exhibits subject to the subsequent objection if after you have time to familiarize yourself with the documents you desire to object? If you don't, the record will be closed. If you do, the Tribunal will entertain your objections or your motions.

DR. VON KELLER: That was what I was about to suggest, Mr. President.

MR. SPRECHER: I want to say I appreciate Dr. von Keller's acquiescence. I had been informed that they had been delivered, but I might be wrong, that they are only delivered today.

Now on the basis, Your Honor, of these two documents, that is to say, Prosecution's Exhibits 1627 and 1628, the Prosecution feels warranted in asking your permission to withdraw Exhibit 1158, that is, NI-6738, which is found in Document Book 56, English, page 26, German page 60.

THE PRESIDENT: Would you mind for me, please, to repeat merely the exhibit number?

MR. SPRECHER: Yes. That is Exhibit 1158.

THE PRESIDENT: Now I may assume also, of course, that if for any reason there is an objection to the other two preceding exhibits that you just now offered and they should be excluded, you would not want to be bound by this withdrawal.

MR. SPRECHER: Yes, I should say that. I have been asked for a reinstatement of this.

THE PRESIDENT: Very well.

MR. SPRECHER: Now I might explain the document only briefly, Mr. President. That is an affidavit of a Polish witness, Edward Lasocki. I should say it was a sworn interrogation, and our purpose principally in submitting it was to talk about the transfer of this equipment which is covered by these other two documents, assuming there is no objection or assuming they stay in evidence.

THE PRESIDENT: What is your program now for them?

MR. SPRECHER: Mr. President, I can tell you. I have one more document. Might I-----

THE PRESIDENT: Oh, I am sorry. I thought that was the last.

MR. SPRECHER: The Prosecution would like to offer NI-12389 as Prosecution Exhibit 1629. This is an interrogation of the defendant Kugler of the 25th of April, 1947, by Mr. Newman. It has already come before Your Honors in connection with a motion by the Defense concerning Prosecution Exhibit 1015 for identification.

We would like, Your Honor, to point out for your consideration the remarks made concerning aggressive war by the defendant Kugler at pages 7, 8, 9 and 10 of the mimeographed copy, and would you place this document in Document Book 56 behind Kueppor's affidavit? That is the English, page 88, and the German, page 128 of Book 56.

THE PRESIDENT: The Tribunal has not forgotten that it has before it a matter to be ruled on in connection with those affidavits. We were somewhat delayed as Counsel will recall by the fact that it took a bit of time for you to make your responses, but we will dispose of that very soon.

Now at the risk of running over a little, I think you had better tell us as briefly as you can what your program is for tomorrow.

MR. SPRECHER: Yes. We will continue with the document books, Mr. President, and in case any foreign witnesses come in, our position is that sufficient notice has been given by the indexes in the document books for some substantial period so that we might want to interrupt

and call them. We will give you as much notice as possible. At present we know of none who are here nor who are on the way.

THE PRESIDENT: Now just before we recess, the Tribunal has mentioned heretofore that it was looking forward to having a conference with some committee of Counsel for the Defense and some representatives of the Prosecution staff for the purpose of taking a survey of how we are going to handle the remaining part of the Prosecution's case in chief and with the idea of looking forward to mapping out some program as to the matter of the Defense. We are about ready to give consideration to that, and we should like unless there is some reason why it cannot be done to have a meeting with the representatives of the two groups tomorrow afternoon at adjournment. We may, in fact, adjourn a little early in order to have a little more time available. Is there any reason why we cannot take that matter up in chambers after adjournment tomorrow so far as you are concerned, Dr. Gierlich?

DR. GIERLICH: Mr. President, I know only that Dr. Boettcher intended to discuss the matter this afternoon among the Defense Counsel, and everyone has been asked to attend this meeting. I am in no position to predict whether we can reach any decision, but I believe that it will be possible to have this discussion tomorrow.

THE PRESIDENT: Counsel, even if it is not possible for you to make as full a commitment as you might like, we think it probably would be helpful to start in a preliminary manner and talk things over around the table with you so we understand your limitations, but we will have the meeting anyway.

Is that agreeable to the Prosecution?

MR. SPRECHER: Yes, Mr. President.

THE PRESIDENT: Very well, the Tribunal will now recess until nine-thirty tomorrow morning.

(The Tribunal adjourned until 0930 hours, 25 November 1947.)

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UNITED STATES MILITARY TRIBUNALS NÜRNBERG

**CASE No. 6 TRIBUNAL VI
U.S. vs CARL KRAUCH et al
VOLUME 13**

TRANSCRIPTS
(English)

25 November - 17 December 1947 pp. 4314-4710

Official Transcript of the American Military Tribunal No. VI in the matter of the United States of America, against Carl Krauch, et al, defendants, sitting at Nurnberg, Germany, on 25 November 1947, 0930-1630 hours, Justice Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI. Military Tribunal VI is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the Court.

MR. PRESIDENT: You may make your report.

THE MARSHAL: Sir, the defendants Schmitz and Jaehne are sick. All other defendants are present.

THE PRESIDENT: The Defendants Schmitz and Jaehne will be excused for the day. Any preliminary announcements from the prosecution?

MR. SPRECHER: Mr. President, we plan to continue the presentation of documents today. However, this afternoon we may bring the affiant Falkenhahn.

THE PRESIDENT: In that connection, I had spoken to Judge Nusmanno about the excusing of the defendant Ohlendorf. He said that he could be very conveniently excused yesterday, today or tomorrow, and perhaps later, if it was so desired. I just mention that to you so that if you wish to have it arranged to have him brought up from the Tribunal it may be arranged that way. Just let me know when you desire him, and I will communicate with that Tribunal and arrange to have him excused.

MR. SPRECHER: Thank you. We'll bear that in mind. Dr. Nelte notified me yesterday that he and Defense Counsel Pribilla, who are principally interested, were willing to waive the cross examination of the affiants Feikel, Klodzinski and Tondos.

THE PRESIDENT: In view of that representation, the prosecution will be relieved from producing those witnesses

for cross examination.

Can you, without burdening you to make a calculation, give us a rough estimate of the number of witnesses yet to be cross examined, Mr. Prosecutor?

MR. SPRECHER: Well, I can give you a rough statement. I think it's around 42 to 45. Now, that refers to all affiants who are outstanding for any purpose. If the defense has indicated that they are attempting to get cross interrogatories or counter affidavits and that they are still considering a waiver of cross examination that is included, but I am giving you the outside level.

THE PRESIDENT: The Tribunal is anxious to make some references to the Commissioner to take over the cross examination of a substantial number of those witnesses and if there are to be any further waivers or, if counsel decides to use cross interrogatories or counter affidavits, it would be well to make a survey of that situation because we're just at the point now of determining what witnesses we will refer to the Commissioner for cross examination. The Tribunal is very anxious to expedite the winding up of the Prosecution's case in view of what has been said about the approaching end of the case-in-chief, and we're very much concerned about not taking any unnecessary steps of transferring witnesses for cross examination and then having them subsequently waived.

MR. SPRECHER: Mr. President, in that connection, I had a memorandum last evening from the Apprehension Branch, stating that they would certainly not bring here or attempt to bring here the affiants Dietzsch and Hoven, who are in Landsberg Prison, having been sentenced by Tribunals in this building, except under the most extraordinary circumstances, and I take it, among other things, it would involve an order by Your Honors which could be transferred to the Landsberg Prison authorities, and already I understand that the defense

has indicated that that might be a case for the Commissioner and representatives of the Defense and Prosecution to go to Landsberg itself to take.

THE PRESIDENT: That would certainly appear to be the proper approach of that problem. The Commissioner could go to where these witnesses are, in company with representatives of the prosecution and defense counsel, and conduct a cross examination there and save all of us a good deal of trouble.

Do you have something to say, Dr. Nelte?

DR. NELTE: I should like to say something personally in this connection, Mr. President. The affidavit which will be the next thing Mr. Minakoff will offer to you is the affidavit of the former Kapo Dietzsch, who is serving a sentence in Landsberg. NI-12184. Even if you have already read this affidavit, you will have discovered that it, as well as the the affidavit of Hoven, contains many conclusions and expressions of opinion and references to Dr. Ding. In consideration of yesterday's decision of the Tribunal regarding the Hoven Affidavit I should like to suggest that in this case the Defense and Prosecution proceed in the same way as in the case of the witness Olga Lengyel. As to the affidavit of Olga Lengyel, which you may perhaps remember, I looked it through and marked those passages which, in my opinion, were not admissible as testimony and should not be offered. The Prosecution took notice of these notations and we agreed upon the passages which were to be eliminated. In the case of Kogon Hoven and Dietzsch I should like to simplify the procedure and make it unnecessary for all the passages from the Dietzsch Affidavit to be read here which, in my opinion, are inadmissible, and I should like to suggest that Mr. Pribilla and I indicate those points of the affidavit, which, in our opinion, are not testimony of fact, but hearsay testimony or which are irrelevant. We would then submit this list to the Prosecution

and together we would submit our findings to the Tribunal for consideration in the Judgment, and, in this connection, I should like to speak also of the witness Kogon, which is the next affidavit, NO-281. We have waived the cross examination of this witness, but we did not waive the right to make remarks about this affidavit, and, in order to avoid having to come forth repeatedly, I should like to point out to the Tribunal that this affidavit was not made for this trial, but for the Medical Trial and, according to its entire contents, it has very, very little to do with our trial. There are some very interesting and very regrettable and significant facts given in this affidavit but, first of all, I should like to say that this man Kogon, as you can see from #3 of the affidavit, was not in a position to say anything, from his own knowledge, until April, 1943 and also it is only #5, and the last two paragraphs of #12, and #19, which say anything referring to I.G. Farben and its plants, and I should like to be able to say this too. In as far as the affidavit contains parts in the other paragraphs which are completely irrelevant for this case, I ask that the affidavit be not admitted into evidence.

THE PRESIDENT: In view of the fact that the Tribunal has repeatedly indicated that, in the consideration of this evidence, it will disregard those parts of affidavits that are purely surplusage, expressions of opinions, and/or otherwise incompetent evidence, it seems to us that the matter of which counsel has just spoken ought to be arranged without taking the time of the trial proper. I may say that if there are instances where Defense counsel would be inclined to waive the cross examination of a witness if the parts of the affidavit or affidavits involved appear to be incompetent, we would very much appreciate it if you gentlemen would take that up informally and eliminate those matters and then, by

stipulation, indicate what you have agreed may be proper evidence before the Tribunal. Certainly you are not depriving yourself, either one, of any substantial right because, in the long run, if that isn't done, the Tribunal will do it itself, and it may save your time and ours by dispensing with some cross examinations altogether or limiting the scope of others.

We suggest, Dr. Nelte, that the Prosecution confer with you and undertake to see if an understanding can be reached with reference to these two affidavits, especially with respect to striking from the evidence those parts which you think are immaterial to the inquiry. It certainly wouldn't be proper procedure to take the time of the Tribunal to undertake to do that during the course of the trial. We would be very glad to have reports from you, gentlemen, of what you have been able to accomplish along that line as to other affidavits where counsel for Defense anticipates that it is opinions and conclusions of witnesses that are troubling you and that you might otherwise be inclined either to dispense with or limit your cross examination, if those were out of the affidavits, please take that up with the Prosecution and make an effort to reconcile the matters. If you cannot, of course, it will become the duty of the Tribunal to pass upon them.

We will very much appreciate your cooperation in that respect.

MR. MINSKOFF: May I say something, Your Honor?

THE PRESIDENT: Yes.

MR. MINSKOFF: With respect to certain of the affidavits the Prosecution is quick to admit that there are irrelevant matters contained and is happy to speak with members of the Defense in the interest of facilitating the trial. With respect to other affidavits - for instance, the affidavits

of Hoven and Dietzsch and Kogon - there is much material contained which the defense characterizes as hearsay even though such material obviously deals with experiences these persons had and with conversations in the course of their business, which is completely different from the ordinary hearsay rules. Now, we are perfectly happy to sit down with Mr. Nelte and any other members of the defense staff in the interest of eliminating those portions which are immaterial. We submit, if it please the Court, that the entire conception of hearsay is somewhat misunderstood when the kind of objection just made in the case of Hoven, Dietzsch and Kogon is brought before this Court.

THE PRESIDENT: Well, of course, we do recognize that the term hearsay is rather a loosely used expression. To illustrate it, I suspect that if you tell me your name, you're giving me a hearsay; that you would not have any personal recollection of what your name is. There are many, many exceptions to that. I don't want to get into that field. These rules are pretty well defined, and we cannot be much misled with respect to those things.

Please give us a report as soon as you are able to do it with respect to your two affidavits.

Anything, Dr. Boettcher?

DR. BOETTCHER: Mr. President, I should like to announce this very briefly: In the conference of the Defense Counsel yesterday, the little commission of five or six men was appointed which will appear for the discussion with the Tribunal this afternoon as it was suggested.

THE PRESIDENT: Very well.

You may proceed, Mr. Prosecutor.

MR. MINSKOFF: It it please the Court, in view of the rather lengthy excerpts from the affidavit that were read by the Defense Counsel, we will not spend any more time on the affidavit of Mr. Hoven which is NI 12182, Prosecution's Exhibit 1611.

THE PRESIDENT: What book is that in?

MR. MINSKOFF: I'm sorry, Your Honors. That is in Book 84. 84. Prosecution's Exhibit 1611.

The Prosecution offers at this time, NI 12184, as it Exhibit 1630.

THE PRESIDENT: Now, in view of the observations which Dr. Nelte made, we will permit the Exhibit 12182 to be given #1611 and received in evidence, subject to effort of counsel to try to reconcile the matter of the incompetent parts of it. The same will apply to the next document, 12184, and what is the number for that?

MR. MINSKOFF: I thought that 12184 would be 1630, but am I mistaken? That is correct. Then the other is already in evidence as 1611.

THE PRESIDENT: That is right.

MR. MINSKOFF: May I call the Court's attention to a portion of the affidavit which unquestionably is not subject to the criticism which was raised before the Court? On Page 70 of the English and 102 of the German, the affiant states, in paragraph 10:

"At no time was there a typhus epidemic at Buchenwald. Isolated cases did not occur until the end of 1943 and beginning of 1944 and these involved a small number of new prisoners. All cases in existence at Buchenwald up to that time were induced by artificial infection."

The Prosecution offers at this time the affidavit of Eugen Kogon, NO 261, as Prosecution Exhibit 1632. I'm sorry, Your Honors, 1631, and

calls Your Honors' attention to page 72c of the English and 108 of the German, where the affiant states:

"The medical experiments outlined above in paragraph 10 were conducted on involuntary inmates of the concentration camp."

And again, on page 72d of the English, 109 of the German, he states:

"About 25% of the inmates selected for these experiments were foreign nationals, none of whom were persons condemned to death as criminals. In fact, none of the prisoners used in Block 46 for the purpose of medical experimentation were criminals condemned to death."

The Prosecution offers, as Exhibit 1632, NO 1429, a letter from the Reich Ministry of Interior to I.G. Farben, Bahring Works, and calls the Court's attention to page 73 of the English, 117 of the German, where I. G. Farben is informed:

"....that the typhus vaccine manufactured by you has proved less effective than the egg cultivated vaccine of the Robert Koch Institute."

The Prosecution offers NI 10176 as its Exhibit 1633. NI 10175 as its Exhibit 1634. These are merely offered to indicate the initiative taken by I.G. Farben in the experimentation with I.G. Farben products.

The Prosecution offers, without comment, NO 923 as its Exhibit 1635.

I believe that covers the Book 84. The balance was blacked out because the document is inaccurate. We will proceed with Book 85, if it please the Court.

The Prosecution offers NI 12245 as its Exhibit 1636, without comment, and asks the Court to ignore the index on that document. It is inaccurate.

The Prosecution offers NI 11427 as its Exhibit 1637 and calls the Court's attention to page 3 of the English and 4 of the German. This is a letter from I. G. Farben, Hoechst, to I.G. Farben, Marburg, wherein it is stated:

"We would like you to get in touch with Dr. M....."

That's Dr. Mrugowsky.

".....now and to ask him whether he would be willing to test these 3 dysentery vaccines in several series of experiments."

"Thirdly, we ask you to inform Dr. M. of the fact that with regard to the chemical treatment of typhus we had made promising progress and we would attach great value to having our preparation 3582 tested clinically in the next typhus season. We are attaching a description of this preparation."

DR. NELTE: Mr. President, in connection with Document NI 11427, I should like to ask the Prosecution to tell us what is the meaning of the loosely bound sheets where it says: "excerpts from Book 238." These pages appear repeatedly and I cannot determine what these books are from which these documents are taken, and I believe it would be important for the Tribunal to know where the documents come from.

MR. MINSKOFF: If it please the Court, there are a number of books of documents taken from I. G. Farben, Hoechst and Marburg and Leverkusen, and, in some cases, as a matter of facilitating the work of processing, we refer just to portions of the book which were extracted rather than to take the whole book as a document which has very many letters and other type of material in it. Each page is numbered so there won't be any confusion when the book is referred to.

THE PRESIDENT: Are the books from which this exhibit is taken available for examination by counsel for Defense?

MR. MINSKOFF: Yes, Your Honor.

THE PRESIDENT: Very well. You understand, Dr. Nelte, that the source of the document is available to you?

DR. NELTE: Yes, I will take advantage of that opportunity. Well, then, I should like to say something else. Mr. Minskoff, whenever he gives the contents of any documents, always says "the I.G.", as for example, when speaking of Kogon and Dietzsch, he uses that expression. I should like to ask him in view of the fact that we have individual defendants here, and since I. G. Farben consisted of an enormous number of plants, to indicate which individuals or which persons he considers responsible, because I. G. Farben as such cannot be responsible.

MR. MINSKOFF: May I answer that?

THE PRESIDENT: Yes, surely.

MR. MINSKOFF: At the very outset the Prosecution quoted from the affidavits of defendant Hoerlein and defendant Lautenschlaeger and very clearly outlined their respective responsibility as they admitted it. The persons were in complete control and complete charge of I. G. Farben, Hoechst, I. G. Farben in Leverkusen, I. G. Farben, Marburg, I. G. Farben Bahring Works. When we state a plant, they know which of the two is responsible for the particular plant and which had an overall responsibility.

THE PRESIDENT: There is no occasion to consume time with this kind of matter. We have indicated repeatedly and we now say again that we do not regard the statements of Counsel, be it Counsel for the Prosecution or Defense, that are made in connection with the presentation of evidence. There will be ample time to argue this case and have Counsel to draw conclusions as to whether a particular document binds a particular defendant or not. If we want into the refinements of language in every instance in which a document was offered, we would consume a very great bit of time. Insofar as Counsel can, we think it would be a proper procedure to indicate to whom the document does apply, but if you misstate it or reach conclusions that are not justified by the evidence, we will disregard the statements of Counsel as to the contents of the document and look to the document to see to whom it does apply, if anyone. You may proceed, gentlemen.

MR. MINSKOFF: The Prosecution now offers NI-9701 as Prosecution's Exhibit 1638. It calls the Court's attention to page 6 of the English and page 7 of the German where there are the minutes of a discussion with Mrugowsky in the presence of Dr. Kohlhaas of the Behring Works. It is stated under paragraph 4: "Testing of Typhus Preparation 3582.

"Dr. Mrugowsky being handed a report about the preparation and he declares himself prepared to carry out in appropriate cases experiments with 3582 and the necessary material for this purpose will be put at his disposal. Dr. Mrugowsky declares emphatically that he is very much interested in these experiments and he promises to further them with all means in his power. In our presence he called in the Deputy Chief Medical Officer to whom he gave the appropriate instructions about the testing of the preparations."

The Prosecution offers as its Exhibit 1639 Document NI-11433 and as its Exhibit 1640 NI-11432. Both are offered merely to indicate the sending of materials and preparations for the conducting of experiments.

The Prosecution offers NI-9581 as its Exhibit 1641. This letter from I. G. Farben Bayer to I. G. Farben Hoechst, copies to Leverkusen, indicates that all three places in I. G. Farben were aware of experiments on the Eastern Front as well as the others.

DR. PRIBILLA: Dr. Pribilla.

Mr. President, in the case of Document NI-9701, the following Document NI-11433 and the last-mentioned Document NI-9581, I should like to ask you to put a question mark in the index since the Defense is of the opinion that the documents do not refer to experiments but only to tests.

THE PRESIDENT: That will be done.

MR. MINSKOFF: We don't know whether there is any distinction in the English language between testing these materials and experimenting with these materials.

THE PRESIDENT: Let us get along, gentlemen. We are not making very much progress this morning. Let's get on the job here, please.

MR. MINSKOFF: The Prosecution next offers as its Exhibit 1642 Docu-

ment NI-11502 and NI-9580 as Prosecution's Exhibit 1643. Both are offered without comment.

The next document, NO-265, is already in evidence as Prosecution's Exhibit 1608. The Court's attention is drawn to page 23 of the English and 26 of the German where it is stated under 10 January 1943: "Therapeutic experiments Akridin and Methylene Blue.

"On suggestion of the I. G. Farbenindustrie A. G. as spotted fever therapeuticum were tested:

"a) Preparation 3582 "Akridin" of the chemical pharmaceutical and serobacteriological department in Frankfurt-am-Main-Hoechst, Professor Lautenschlaeger and Dr. Weber. (Therapeutic experiment A).

"b) Methylene blue, tested in an experiment on mice by Professor Kiskuth, Elberfeld. (Therapeutic experiment M)."

The Prosecution now offers Document NI-11415 as Prosecution's Exhibit 1644 and asks the Court's attention to be drawn to page 46 of the English, 44 of the German, wherein a letter from Hoechst to Leverkusen —

DR. PRIBILLA: Mr. President, I should like to call your attention to a misunderstanding arising from the various names given to diseases in English and German. In the index of the document we see that the letter indicates Dr. Mrugowsky as the main tester for typhus but the letter says "Typhoral". This is a typhoid drug.

THE PRESIDENT: To which exhibit are you referring, Counsel?

DR. PRIBILLA: The last one, Mr. President, 1644.

THE PRESIDENT: The number?

DR. PRIBILLA: NI-11415, page 46 in the English book. The disease which is mentioned here is called typhoid in German.

THE PRESIDENT: If Counsel pleases, there is nothing in our index about typhus or typhoid. The terms are not used in our index.

DR. PRIBILLA: Typhoid.

THE PRESIDENT: Not in our index.

DR. PRIBILLA: In my index, Mr. President, it says, "Dr. Mrugowsky is our main tester of the preparation 3582."

THE PRESIDENT: Yes, but there is nothing about typhus or typhoid in ours.

DR. PRIBILLA: That is typhus, and in the document it says, "He is our main taster for 'Dysperos' and 'Typhoral'."

THE PRESIDENT: Very well.

DR. PRIBILLA: That is typhoid.

THE PRESIDENT: We will indicate that the index is questioned by the Defense.

MR. MINSKOFF: Attention might be called, if it please the Court, to the heading of the document, "Nitroakridine preparation 3582." It is then followed by the comment, by the text:

"Standartenführer Dr. Mrugowsky has for a long time been closely connected with us as the chief taster for 'Dysperos' and 'Typhoral'. He has had small amounts of our typhus preparation for some time, having gotten them through Professor Bialling. He received the first larger delivery in September, 42, after a discussion with the right-hand signatory; he has received 30 lots containing 10 tablets at 0.25 each. We have asked to be informed of the results by 8 January."

The Prosecution offers NI-12242 as Prosecution's Exhibit 1645 and draws the Court's attention to page 47 of the English and 46 of the German where it is stated:

"It would be desirable if Dr. Weber's previously-announced visit to Leverkusen/~~7~~-Köln would soon take place so that we can coordinate all the tests of the typhus preparation and accordingly prepare a new version of the exposition, exploiting the interest of the Army Medical Inspection Board in the remedy", in which incidentally, if Your Honors please, the word "exploit" as it appears in the text is correct. The word "stimulate" in the index should be "exploit".

The next document is a reference again to Document 265 which is Prosecution Exhibit 1608, and the Court's attention is called to page 23 of the English, 26 of the German, where it is stated under the heading 26 January 1943:

25 Nov 47-~~47-48-3-5~~-Putty (Int. Katz)
Court No. VI, Case No. VI.

"Artificial infection with Eidotter-Virus Op No 223 and 226:

"20 persons for therapeutic experiment A: Akridin

"20 persons for therapeutic experiment M: Methylene blue

"7 persons for control."

THE PRESIDENT: Now, Counsel, I am concerned that you do not construe this suggestion as criticism of you at all. We have no objection to the way you are presenting these documents whatever, but we may say to you that when the part of the document that you rely on is set out in the index and you are simply calling attention to that which is quoted or summarized, in almost every instance the Tribunal is about one jump ahead of you and has read it before you get to it because of the mechanics you have to go through of getting the numbers assigned to the document and making the statement for the record. If there is something beyond the matter quoted or cited in the index that you wish to call our attention to, it would certainly be proper, but as a practical matter when the index fairly discloses the part of the document you are relying on, it would be just as effective and save one-half of the time if you would just simply say, "We call attention to the index", because, after all, we are usually ahead of you and have read it before you do, and then we listen to you read it again. Now there are many instances I know, in which you do want to elaborate beyond your index, and that is certainly permissible.

MR. MINSKOFF: Well, one of the reasons, if Your Honor please, that the technique used has been adopted is that you will have noticed that in many instances indexes are ignored or just passed without comment, and we try to restrict the record to the portions we think Your Honors will want to have before you, and it is those portions which we are trying to read into the record this way.

THE PRESIDENT: Yes, well, it makes very little difference whether they are in the record because we take the record and the document books together in the consideration of a document. We just offer that purely in the interest of time to save you work. You are doing all right.

MR. MINSKOFF: The Prosecution offers as its Exhibit 1546 NI-12244 and it refers the Court to the following document which is NI-11417 which is already in evidence as 1520, Prosecution's Exhibit. Both of these documents are offered without comment.

The Prosecution offers as its next exhibit NI-11418 as Prosecution's Exhibit 1647, NI-9712 as Prosecution's 1648, NI-9714 as Prosecution's Exhibit 1649, and on the following page NI-11405 as Prosecution's Exhibit 1650. With respect to Exhibit 1647 the portions in the index, if it please the Court, are the portions that your attention is drawn to, and there is no comment as to 1648. I am informed, if Your Honors please, that I have mistated the facts on the exhibit numbers and that NI-11417 was not in evidence and should, therefore, be introduced as Prosecution's Exhibit 1647. Make that 1651.

THE PRESIDENT: NI-114177

MR. MINSKOFF: Is 1651.

THE PRESIDENT: Is 1651. Thank you.

MR. MINSKOFF: The other numbers remain as they were given.

THE PRESIDENT: Very well.

MR. MINSKOFF: With respect to the Prosecution's Exhibit 1649 the Court's attention is particularly drawn to the last part, to the portion which appears at the last part of the index where it is stated:

"We hope that it will be possible for you to use 10% granulate on typhus patients at once without our having to waste time on previous tests."

Finally, Prosecution's Exhibit 1650 is merely offered to show that I.G. Farben Hoechst knows that where it says Dr. Hoven is in fact intended Dr. Ding.

The Prosecution offers NI-9713 as Prosecution's Exhibit 1652 again showing the connection between Hoven and Ding and the quantities of materials sent for testing.

With respect to Prosecution's Exhibit 1608 which appears as the next document, No. NO-265, the portion of the index reflects the portion of the document your attention will be called to.

The Prosecution offers NI-9715 as Prosecution's Exhibit 1653 where again the letter indicates that the agreement between Farben and Ding required that the materials go to Dr. Hoven for the testing of typhus

preparations.

The Prosecution now offers the following documents, NI-9727 as Prosecution's Exhibit 1654, NI-9728 as Prosecution's Exhibit 1655, NI-9729 as Prosecution's Exhibit 1656 and NI-9730 as Prosecution's Exhibit 1657. The Court's attention is directed to page 62 of the English and 65 of the German where it is indicated Dr. Ding reports that his therapeutic experiments were not particularly successful, and that in a further series of experiments he wants to commence treatment at an earlier stage, that is, earlier than the three days indicated above. There is no comment with respect to Prosecution's Exhibit 1655 other than what appears in the index. The same is true of Prosecution's Exhibit 1656.

The Court's attention is drawn to page 67 of the English and 69 of the German where in a letter signed by Lautenschlaeger and Weber of Hoechst again the reference to the bottles forwarded to Dr. Hovan is made and preparation made for further experiments, and he has asked him to come to Hoechst to discuss the matter with him.

The Prosecution now passes to the following document which is NO-265, Prosecution Exhibit 1608, where the index indicates the portion to which the Court's attention is drawn. The following document, NI-9732, is offered as Prosecution's Exhibit 1658 without comment; also NI-12243 is offered as Prosecution's Exhibit 1659 without comment, and the Court is asked to ignore the first paragraph of the index.

The Prosecution now offers NI-9733 as Prosecution's Exhibit 1660 and NI-9735 as Prosecution's Exhibit 1661 and again refers to NO-265, Prosecution's Exhibit 1608. With respect to all three documents the Prosecution merely indicates the visit of Dr. Ding to Hoechst and the conference with the defendant, Lautenschlaeger.

The next document is NI-9811, which is already in evidence as Prosecution Exhibit 1520.

The Courts attention is drawn to page 76 of the English, 84 of the German. In paragraph 10, the defendant states: "In 1942 or '43, Dr. Julius Weber announced to me that the SS doctor, Dr. Ding, Hoechst, had notified him of his forthcoming visit to examine Dr. Fussgaenger's experiments. After the conference with Dr. Fussgaenger, Dr. Julius Weber presented Dr. Ding to me. Dr. Ding submitted to me the curvass of about twenty patients whom he had treated with Preparation 3582. There were also the curves of patients who had not been treated with Preparation 3582.... Although I could see from the curves that after a relatively short period the outcome of the disease was usually fatal, I remarked to Dr. Ding that his results were considerably less favorable than those which Dr. Julius Weber had reported to me from other clinics. Dr. Ding stated that his cases had been kept under close observation and that it was a question of 'induced infection.'"

"After the talk with Dr. Ding, it was clear to me from his use of the expression 'induced infection' that Dr. Ding had not been carrying out clinical tests on soldiers with typhus, but on artificially infected people. From then on I refused to have the preparation supplied to Dr. Ding for experimental purposes."

And on the following page Dr. Lautenschlaeger states:

"We decided that the correspondence with Dr. Ding should cease at once, and that he should receive no new preparations or further quantities of Preparation 3582."

And in paragraph 15 he states: "Neither Dr. Albert Demnitz nor Dr. Rieling called my attention to the fact that the two typhus vaccines 'weak' and 'strong' of the Margurg Behring works were being delivered to the SS and misused by Dr. Ding, inasmuch as shortly after

the protective inoculation people were artificially infected with typhus."

Prosecution offers NI-11424 as Prosecution Exhibit 1662 without any further comment than which appears in the index itself.

Prosecution offers also NI-12184--it doesn't offer it, Your Honors; it just calls attention to it. It is already in evidence as Prosecution Exhibit 1630, and submits at this time there is no further comment with respect to it.

The next document is NI-12182, which is already in evidence as Prosecution Exhibit 1611. No further comment with respect to it is made at the present time.

Prosecution offers Document NI-9737, as Prosecution Exhibit 1663, and NI-11425 as Prosecution Exhibit 1664, wherein it is pointed out that Dr. Ding is the main tester--or their attention is focused on Dr. Ding's experiments with acridine.

Prosecution passes to NO-265, which is in evidence as 1608, and offers NI-9741 as Prosecution Exhibit 1665. It again refers to NO-265, which is in evidence as 1608, which merely shows the follow-up of the experiments in Buchenwald by Dr. Ding and the report to I.G. Farben, Hoechst.

Prosecution offers NI-9743 as its Exhibit 1666.

If it please the Court, there is an error in the book as to the document, and we are passing out the correct document to you to substitute for the one which appears here.

THE PRESIDENT: In this book?

MR. MINSKOFF: That is right; it is NI-9743. It is now in evidence as Prosecution Exhibit 1666. The proper insert is being passed to Your Honors now.

In closing this book, Your Honors attention is merely called to the file entry on the experiments, which appears on page 31 of the English and 34 of the German, in Exhibit 1608, under the heading

1 June 43, "Charts of case history completed. The experimental series was concluded: 21 deaths (8 with Akridin-Granulat); (8 with Rutenol); (5 controlled)".

Signed: "Dr. Ding."

That completes Book No. 85, if it please the court.

We may proceed to Document Book No. 86.

Prosecution offers NI-11497 as Prosecution Exhibit 1667 and NI-11498, as Prosecution 1668, and NI-11499 as Prosecution Exhibit 1669. This is merely to draw the Court's attention particularly to the dates of the three letters involved, the first being June 17th, and the third June 17th. For additional deliveries Dr. Hoven, preparations are being made. In the first that is 1667. Then the conferences with Dr. Ding in the following two documents, 1668 and 1669.

Prosecution now offers NI-9745 as Prosecution Exhibit 1670. Again attention is merely called to the fact that Dr. Mrugowsky, through whose office and through whose good offices Dr. Ding can operate, is contacted again as to the same experiments.

Prosecution offers NI-9746 as its Exhibit 1671 where they merely report, as the index indicates, to the effect that the experiments were not successful and did not seem worthwhile.

Prosecution offers NI-11420 as Prosecution Exhibit 1672, and calls the Court's attention to page 6 of the English and 11 of the German, where it is indicated at the bottom of the page that further preparations were being sent--this is to Mrugowsky himself--and it is stated that: "we...would be pleased if you could make clinical tests with this preparation. Should you require larger amounts for the experiments, please notify us as early as possible."

Prosecution now offers without comment NI-12246 as its Exhibit 1673--

DR. NELTE: Please excuse me, Mr. President. I merely wanted

to ask the Prosecution to tell me where this document originates from. It doesn't bear any title, nor any signature, nor does it have any other designation of origin.

THE PRESIDENT: Doctor, for the record you had better state the number of the document to which you refer.

DR. HALTE: The last document, NI-1246 ---

THE PRESIDENT: Thank you.

DR. NELTE: ---which was offered as Exhibit No. 1673.

MR. MINSKOFF: If it please the Court, the document referred to, 1673, is taken from the personal file of Dr. Fussgaenger, of Hoechst, of I. G. Farben Hoechst. It is a file note and does not have any signature, as indicated.

THE PRESIDENT: Does that fact appear from the certificate?

MR. MINSKOFF: I believe the certificate merely mentions the document as entered but we can mark it for identification and attach the certificate to it, if Dr. Nelte wishes that. It was taken from another group of documents from these files.

THE PRESIDENT: We will indicate counsel's objection on the record.

MR. MINSKOFF: If it please the Court, the objection is well made here. The word "inmates" in the index should not be "inmates" it should be "patients".

The next document, if it please the Court, is NI-12249, and it is offered as Prosecution Exhibit 1675. There is no comment with respect to it. The Court's attention is merely drawn to the persons present at the meeting. Prosecution now offers as its Exhibit 1676---

DR. NELTE: Please excuse me. I have something to say with regard to Document NI-12249, which was just offered. It is a list of participants at the opening session of an institute, and in this document book there are twelve pages used to show who was present at this opening session. What happened at this opening session, whether any speeches were held, or what happened otherwise—we cannot see. I cannot imagine that this list of participants has any probative value for the questions and facts to be discussed in this trial. Therefore, I ask you to reject this document as irrelevant.

THE PRESIDENT: The Tribunal might observe that it is impossible for it to see any probative value in Document 1675, or the preceding document, 1674. If it was purely a matter of encumbering the record with some surplusage, it would be quite harmless and we could well disregard it in the consideration of the case. But the more serious matter is the fact that if it is in the record it opens the door and places upon counsel for the Defense the burden of meeting something, the relevancy of which we cannot see. It may be that counsel for the Prosecution can suggest wherein it has some probative value, but it is not apparent on the fact of it; that either the document spoken of by counsel for the Defense or the preceding have any connection whatever with this case.

MR. MINSKOFF: With respect, if it please the Court, to the Document 1674 as well as four documents which will be introduced very shortly, it is the purpose of the Prosecution to show that I.G. Farben, through its various plants: Hoechst, Leverkusen, Marburg, Bohring Works, had experiments conducted not only in concentration camps

upon inmates, but also upon other groups of persons where their ability to consent would be lacking. And we therefore show documents of experiments on Russian prisoners-of-war, patients in insane asylums, inmates in concentration camps. It is submitted that all the groups where experiments were made, all these groups where the persons involved had no alternative, no voluntary consent that they could give.

THE PRESIDENT: Now what do you say to document 1675, to which Dr. Nelte directed his remarks? What is the probative value of that document?

MR. MINSKOFF: With respect to that document, if it please the Court, that was the opening of the institute with which the defendant Lautenschlaeger was directly connected, and the persons present there, if the Court will observe the names—almost all the persons whom this record will show, before it is complete, will have been involved in criminal medical experiments, many of whom have been tried here in these courts and have been convicted of criminal medical experiments. These were the persons who were interested in the founding of the institution; persons who were present at its founding.

DR. NELTE: Mr. President; this collection of approximately two or three hundred persons could only have a probative value if the meeting had its reason in a common or joint plan, or that those people should have met in order to discuss something. But this is merely the opening of an institute. That is a celebration which was attended by people from all over the world. Prof. Lautenschlaeger, for instance, was not present at all.

I cannot imagine that such a list of participants, without any factual connection being established with

the facts in this case, should have any probative value.

THE PRESIDENT: Anything further in this record about this meeting? About this institute or the meeting?

MR. MINSKOFF: No, Your Honors; not about the meeting.

THE PRESIDENT: The objection to the introduction of the document marked 1675 is sustained. Let it keep its number so that if there is any question about it afterwards, we will be able to identify it.

JUDGE HEBERT: Mr. Prosecutor, on 1674 you are not contending that 1674 establishes conduct for which the defendants are criminally responsible in this particular case, are you?

MR. MINSKOFF: If Your Honor please, it is the intention of the Prosecution that a pattern is shown of action where, over a period of years, experiments were made on various groups of persons who could not consent, and under the standards which were put before this Court and asked the Court to pass upon, we submit that these experiments on such persons are illegal as well as unethical; that experimentation upon persons who are not in a position to consent as inmates of concentration camps or persons in asylums or persons who were prisoners-of-war—that all these experimentations are improper and illegal. And it is interesting, it seems to me, to show the entire pattern of conduct that not only in one instance or in two instances—but in very many throughout its various branches of activities it indulged in that type of conduct.

THE PRESIDENT: Just one more question to supplement what Judge Hebert said. What charge in the Indictment is that calculated to sustain? By that I mean to say, is there any general charge of that kind, or does the Indictment charge specifically experiments upon people who were in the employ or working for Farben?

MR. MINSKOFF: No, the Indictment's charge is not limited to persons working for I.G. Farben. It refers to experimentation on human beings without their consent. They are the human beings, mostly, in concentration camps. As I pointed out to Your Honors, the fact of experimentation always on groups which couldn't consent, show a knowledge, show a pattern of activity which were extremely relevant as to the question of what they knew about the experimentation, in particular, for example, in Auschwitz or in Buchenwald. It isn't a thing which did not come to their attention; they did it all over. It was always experimentation on people who could not consent. On the question of knowledge, it would be extremely relevant even if we were not charging a separate crime in particular as to insane asylums.

THE PRESIDENT: Isn't there a pretty well-established rule that, where you rely upon specific conduct, definite, positive facts of illegality, then matters of general knowledge or prevailing conditions are immaterial? In other words, you rely on the act and not upon circumstantial evidence of the commission of an act?

MR. MINSKOFF: That is true, Your Honor. When a man is responsible for the whole plant, the Prosecution would concede that if some person in the plant did something wrong—whether it was a criminal experiment or whether it was beating somebody or murdering somebody—that there wouldn't necessarily follow liability upon the person who is responsible for the plant. On the other hand, if the plant's activities were such that over a period of years experimentation takes place, or beatings take place, or the illegal acts take place, the whole pattern of conduct is such as to place responsibility upon the persons who have responsibility for the plant...

MR. SPRECHER: Mr. President, the Indictment, paragraph 131, alleges experiments on human beings...and then a parenthesis...it says "including concentration camp inmates"end parenthesis; and then goes on to say "without their consent." Now, I suspect one of the things that the Court may be troubled about is the fact that some of those insane people may have been German subjects, and consequently there is a certain hesitancy on the part of a Military Tribunal to apply perhaps the same standard as they would apply where the persons affected by these criminal experiments were nationals of another country than Germany.

The Prosecution certainly cannot concede that where you have an inhuman course of conduct, where the crimes committed are directed broadly toward representatives of foreign nationals, whether they be prisoners-of-war or not, and at the same time are mixed up with criminal acts against German nationals, that, for our purposes, those types of conduct can be distinguished from one another. And if, legally speaking, they can, so far as whether or not the exact crime is made out, so far as the German nationals are concerned, so that you would not find the exact crime was present when German nationals alone were subjected to this inhuman conduct--then we still submit that the whole question of knowledge, because we are dealing here with patterns of action, the whole question of whether or not the proper mens rea (the guilty mind) was present is very important in this connection.

THE PRESIDENT: There is no objection before the Tribunal. This is a case of a waste of time, perhaps it was invited by the presiding officer. Dr. Nolte's objection was specifically to Exhibit 1675 and it was sustained, but in some observation, I referred to the proceedings, for which I am sorry.

The Tribunal will now rise for its recess.

(15 minute recess taken)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may continue, Mr. Prosecutor.

MR. MINSKOFF: We are continuing with Book No. 86, if it please the Court. The Prosecution offers at this time NI 9579, as Prosecution's Exhibit 1676.

The Court's attention is drawn to page 23 of the English, 30 of the German, to a letter which is addressed to I.G. Farben Wuppertal-Elberfeld, which states:

"I therefore take the liberty to ask you whether you already have such a chemo-therapeutic at your disposal, even if it is only in the experimental stage.

"You have, maybe, already experiences in the use of other preparations, respectively you could point out to me what already known preparations promise success, even if only theoretical."

The Prosecution now offers Document NI 9578, as Prosecution's Exhibit 1677, where the comment of the Farben people and the correspondence between Elberfeld and Leverkusen is only to the effect that Dr. Kaufmann seems to have a good opportunity to make therapeutical experiments.

The Prosecution now offers, without comment, NI 9577, as Prosecution's Exhibit 1678, and NI 9575, as Prosecution's Exhibit 1679.

The Prosecution now offers NI 9711, as Prosecution's Exhibit 1680. With respect to this document, the Court's attention is merely called to the fact that here the quantities of preparations which are being sent from I.G. Farben, Hoechst, in a letter signed by Lautenschlaeger a redesignated for use on Russian prisoners-of-war, for testing.

It might be noted it is a portion of the index, 21 March, '43, that the patients who were non-Germans did not have sufficient food.

The Prosecution now offers NI 12250 as Prosecution's Exhibit 1681, without comment. We also offer, without comment, NI 12271, as Prosecution's Exhibit 1682.

The following document, if it pleases the Court, will be ignored. It is not offered. That is NI 12252.

The Prosecution now offers NI 9433, as Prosecution's Exhibit 1683, wherein there is correspondence between I.G. Farben, Marburg, and I.G. Farben Hoechst.

The awareness of the condition of the experiment III is shown in the discussion as to the nature of the improvement that might have been caused by the chemical preparations in contrast to the improvement by the mere recovery of the patient.

The Prosecution now offers Document NI 9747, as Prosecution's Exhibit 1684, NI 11422, as Prosecution's Exhibit 1685; NI 9748 as Prosecution's Exhibit 1686; NI 9749 as Prosecution's Exhibit 1687, and NI 9750 as Prosecution's Exhibit 1688.

No comment is made at the present time other than that which appears in the index before your Honors.

The Prosecution offers as its Exhibit 1689, NO 582, without comment.

The Prosecution offers as Exhibit 1690, NI 12251, and calls the Court's attention to page 76 of the English and 87 of the German. It is a letter from I.G. Farben, Marburg Behring Works to the Supreme Command of the Wehrmacht, and states in short.

"The vaccines have shown no cause for their rejection. The tests have been made on workers from the East or Russian prisoners-of-war from our own works and other nearby industrial and agricultural undertakings, and will continue to be similarly made."

If it please the Court, that is the last document in Book No. 86. The Prosecution will proceed with its Document Book No. 87.

MR. MINSKOFF: The first document in Book No. 87 --

DR. MELTE: Mr. President, the first document in Book 87 is NI-12454. This document, if it's submitted to you in the same manner in the English as it is in the German, contains excerpts from the personal files of a certain Dr. Vetter. From index it can be seen that it is to be shown that this Dr. Vetter, while he was working as an SS physician received money support from the I. G. Farben Leverkusen. In its incomplete form in which this document is submitted to you and to us, a correct impression of the state of affairs cannot be created. The subsidy of 1000 Reichsmarks which you see on page one of the document, was granted to Vetter by a letter of 5 July 1941, which letter advises him of the subsidy and it is a support which he received at the occasion of the birth of his child Walter, at a time when this Dr. Vetter was not an SS physician but when he was a reserve officer, who had just been called-up into the Army and was receiving training in Oranienburg. The second fact which might create a wrong impression is to be found on page two. There it's stated that in August 1943 and it's pretended here as though we are concerned with a letter to SS-Sturm-fuehrer Dr. Vetter which is supposed to inform him that his monthly gross income is 900 marks, but in reality, it can be seen from the documents of August 1943, which are added to the letter, that in a stereotyped letter to all draftees from this department they are informed that the monthly gross income is kept in the books as amounting to 900 Marks. It was in Germany customary that those persons who are drafted to the Wehrmacht and to the SS --

MR. MINSKOFF: If it please the Court, the document which admittedly is incomplete, to the damage of the Prosecution rather than the defense, of course, it's much more

clear in the original than in the English text will be explained. It doesn't speak for itself but the Prosecution does wish to explain the general rules at the time in Germany by this document.

THE PRESIDENT: Well, it's somewhat difficult for the Tribunal to see the pertinency of this exhibit. It purports on its face to be excerpts. Frankly, it is not very intelligible to the Tribunal. Does the Prosecution have anything to say about the competency and materiality of this document?

MR. MINSKOFF: Yes, your Honor. Dr. Vetter is the SS doctor who conducted experiments with Farben products in Auschwitz and Mauthausen and other concentration camps. At all times involved in the documents before this Court Dr. Vetter remained on the payroll of I. G. Farben and during the time he was in the concentration camps as an SS doctor he received a raise in salary. As I see, unfortunately, in making excerpts the document, is as your Honors indicate, unintelligible. I had intended to point out that it was intended to procure substitute pages which are more full, where the Court can easily see what was intended to be seen rather than the mere figures as they appear in the document book now. It's the Prosecutions' contention that the course of the "in" that Farben had with Dr. Vetter and, of course, Vetter was a Farben employee throughout. He was in a position to experiment with Farben products which he did, and the documents preceding this document and the documents following this documents are a clear indication of how intensively he experimented with all of the Farben products wherever he was, whether it was Auschwitz or Mauthausen or any other concentration camp.

THE PRESIDENT: Well, it's quite apparent that the

objection to this document as presented should be sustained. If counsel for the Prosecution thinks that a fuller disclosure of the contents of the document would indicate some materiality we would suggest that you assign it a number for identification only and let the offer of the document be in suspension until you file a further report. We give it a number so that it may keep its place in the book but it will not

considered in evidence until you supply more complete copies. At which time if there is an objection we will consider that objection of counsel.

MR. MINSKOFF: So you deem it so marked, your Honor?

THE PRESIDENT: What number, please?

MR. MINSKOFF: That's 1691 for identification. The Prosecution merely points out that the following document, MI-9750 is already admitted as Exhibit 295. The suggestion has been made by counsel for the Defense that on the index next to the last line where it states "intelligence agents" should be "intelligence officers". There's no comment at this time with respect to the document. It's merely lists the positions as appear in the index of the defendant Goerlein. Prosecution offers --

MR. NELTE: Mr. President, yesterday I had already pointed out that the Document MI-10161 in Book 16, the Document 10161, should be listed as a supplement after this Document MI-9750. I believe, your Honors, will remember that it's the addition of Prof. Goerlein's positions which you will find on page 4 of your book. It's a supplement and a correction which was later submitted and which was accepted by the Prosecution so that no misunderstanding will arise. We ask the Prosecution to confirm that the document MI-10161 shall be added in this place in the Book after 9750.

MR. SPRECHER: Mr. President -- I don't have my book 66 here but Dr. Nelte is an officer of this Court. There were some such documents. On his own representations we ask your Honors to consider it.

THE PRESIDENT: Very well, that will be done.

MR. MINSKOFF: With the Court's permission the Prosecution will now offer MI-9402 as Prosecution Exhibit 1692, where Dr. Vetter points out that he was located in one of the largest and best equipped concentration camps with an opportunity to experiment with the preparations.

Prosecution offers MI-9623 as Exhibit 1693, merely to show the acknowledgment and receipt of the Vetter letter and the notation that he has an opportunity to experiment.

Prosecution offers as its next document NI 9403 as Prosecution Exhibit 1694 where the first follow-up takes place on the Vetter letter and he is asked to make comparative experiments.

Prosecution offers NI-9404 as Prosecution Exhibit 1695 where Dr. Vetter informs Farben with respect to the tests that he has made on the Farben preparations.

Prosecution now offers the following documents: NI-12443 as Prosecution Exhibit 1696; NI-9406 as Prosecution Exhibit 1697; NI-9407 as Prosecution Exhibit 1698. The Prosecution merely calls the Courts' attention to the fact that in these documents the officials of I.G. Farben Leverkusen, in conversation with other I.G. Farben officials, admit that the product referred to has a very low therapeutic value.

THE PRESIDENT: Mr. Prosecutor, in view of the fact that the documents about which you are speaking and the next ten or a dozen relate to a rather narrow subject matter purporting to be the activities of Dr. Vetter and some of his associates or people he came in contact with with reference to the testing or the application of some of these drugs. In view of the further fact that your index is pretty full and complete don't you think that a mere marking of these documents and the reading of the index pretty well covers the story to the Tribunal as to the place of these documents and the picture you are trying to draw from your present showing? I suggest that from the hearing of them it occurs to me that there is not very much oral representation needed to this rather narrow field of evidence with respect to which I express no opinion whatever as to its relevancy or materiality but it does seem to me that just a reading of the index indicates pretty well what is ahead here for the the next good many documents. What do you think about it?

MR. HINSKOFF: I think it's perfectly true that the documents that are offered in evidence - when they are offered in evidence and are available to the Court will perfectly clearly indicate what the Prosecution is attempting to prove. It was merely to assist the Court that some reference was made to certain of the documents and that some of them are grouped together so that the Court could understand the purpose the Prosecution had in putting them in this order and putting them before Your Honors. I think the suggestion that the index to them for the most part cover the material covered in the documents is certainly true.

THE PRESIDENT: Very well. We offer that suggestion for just what it may be worth to you.

MR. HINSKOFF: The Prosecution offers Document NI-9408 as Prosecution Exhibit 1699. Document NI-9405, as Prosecution Exhibit 1700 and Document NI-11413 as Prosecution Exhibit 1701.

The documents all indicate the interchange of information between Farben and Vetter in connection with the experiments that Vetter is conducting for Farben.

The next document is NI-11417 and that's already in evidence as Prosecution Exhibit 1651.

Prosecution passes to NI-12244 which it offers as its Exhibit 1702.

Prosecution now offers NI-9411 as Prosecution Exhibit 1703 and NI-9410 as Prosecution Exhibit 1704. The Court's attention is called to the last document 1704 merely to emphasize the conference being held by Vetter at Leverkusen after he had concluded experimentation on 50 typhus cases.

Prosecution now offers NI-12444 as Prosecution Exhibit 1705 and NI-12445 as Prosecution Exhibit 1706. These two letters are fairly significant in that they indicate that the experimentation was continued after they expected nothing from it and that they approached other persons to conduct further tests on a larger scale with the same preparations with the knowledge that they hadn't been fruitful and were not successful.

Prosecution now offers NI-12445 as its Exhibit 1707 which indicates another conference between Hoechst and Leverkusen with reference to the experiments with Acridin.

Prosecution offers without comment NI-9412 as its Exhibit 1708.

NI-9413 is offered as Prosecution Exhibit 1709 without comment.

Also referred to without comment is NI-10928 which is presently Prosecution Exhibit 1489.

Prosecution also offers without comment NI-9415 as its Exhibit 1710.

Prosecution now offers NI-9417 as its Exhibit 1711 and NI-9418 as Prosecution Exhibit 1712.

Also offered is Document NI-12448 as Prosecution Exhibit 1713.

Particular emphasis is placed on the last of the three documents offered, Prosecution Exhibit 1713, where in a file note from Hoechst,

an interoffice communication in Hoechst, between Fessgaenger and Weber he pointed out that in view of the results they have received so far they would have been discouraged were it not for the fact all of those preparations had been used on patients who, from the beginning, had been in a position of decreased physical resistance.

Prosecution now offers NI-9420 as its Exhibit 1714. This letter is merely offered again to show the complete interchange of information within I.G. Farben.

Prosecution now offers NI-12452 as Prosecution Exhibit 1715 and NI-12451 as Prosecution Exhibit 1716; both without comment.

The Prosecution offers NI 11690 as its Exhibit 1717 and calls the Court's attention to page 71 of the English and 87 of the German where the affiant states that

"Vetter supervised personally the treatment with the preparation he delivered in the beginning once a week, later once every 10 days."

"We learned from private sources that he was paid by the I.G. Farben Industry to give positive opinions on their preparations. In the camp it was known that he was under contract with I.G. Farben Industry."

On the following page, which is 72 of the English and 87 of the German, the affiant states:

"Vetter personally injected the Jews with typhus, by means of blood transfusions from sick to sound persons in a quantity of 1-10 ccm of blood. He made observations concerning the incubation and course of the disease. These treatments resulted in death."

The prosecution now offers NI 9421 as Prosecution's Exhibit 1718.

DR. NELTE: Mr. President, I should like to say something in regard to the last affidavit, NI 12451 and NI 12452. I should like to revert back to an objection that I already made previously. In these two affidavits reports are referred to which are not added to these affidavits in the German document book. In the affidavit of Dr. Tondos it is stated, on page 83 of the German document book:

"The witness gave the case history of the sick persons in the form of loose sheets, with handwritten notes."

These sheets are not in evidence here. They might be of some relevance to determine whether the sick persons died as a result or despite the treatment with these preparations. In Feikal's affidavit, it is stated that the witness submits an unsigned three page long typewritten document dated Auschwitz on the 8th of February, 1943. This document is not added either and would be important to judge the entire state of affairs. I do not want to express my point of view as to its relevancy at all.

THE PRESIDENT: If the Prosecution has access to the document we would

expect, as a matter of course, that it would be made available to counsel for the Defense.

MR. SPRECHER: May we have just a moment, Mr. President?

THE PRESIDENT: Yes.

MR. MINSKOFF: If it please the Court, with respect to a number of witnesses, the Defense has indicated that it would waive cross examination. In each of the cases, particularly as regards medical experiments, important issues which the witness would testify to and was competent to testify to would then be raised on objection. Now, it's perfectly all right with the Prosecution to bring these witnesses down before this Court and have them testify. I am thinking particularly of Dr. Kogon. Until after he was waived they didn't set up objection to the first page of the Diary of Dr. Ding which no one better than Dr. Kogon could authenticate. Now, with regard to the documents mentioned just now. One of the group of documents in the Feikel affidavit the Prosecution has available to it, is processing and will make available to the defendants. The Court's attention is drawn to this. The statement that they want to know whether the patients died because of or in spite of the preparation of I.G. Farben is completely irrelevant. If, in fact, the patients were artificially infected with a disease, they did not have, for the purpose of experimentation, it is no longer important to inquire into the question as to whether the preparation then given to them succeeded or did not succeed in helping them.

THE PRESIDENT: Assuming your theory, might it not be a mitigating circumstance if it was shown that the patient was illegally, we'll assume, infected with some disease, but it was not of a serious nature and it didn't cause his death, and then if you take the other view that he was infected with a disease of a serious nature which did cause his death, you would have, so far as the significance of the evidence, seen whether there was not an aggravation or a mitigation, might that not be material to the Tribunal, do you not think?

MR. MINSKOFF: As stated, yes, but the question before the Court is not quite that question. Here the affidavit particularly states that the

witness personally saw Dr. Vetter infect artificially particular persons with a disease. These persons, in fact, or some of these persons, in fact, died as a result of that infection. Now to say that the question is relevant as to whether he died in spite of the treatment that Farbon then made available is completely out of the question and has no bearing on the crime committed. They are testing a product, now whether it's valid or invalid is not important except collaterally. The important question is they caused persons to be infected who was otherwise perfectly sound and then that person dies as a result of that infection; then to inquire as to whether he died in spite of the treatment he received, isn't a question for the Court to consider.

THE PRESIDENT: This argument is more or less beside the point. Dr. Melts raised the question that there are some documents referred to herein that he thought might be material and he alone is the judge of whether or not they are material insofar as he wanted them offered to the Tribunal and we assume that if you have the documents you will make them available to counsel for the defense. If you don't have them, you can't and there would be no responsibility on you. But we just take it for granted that if you have them they will be supplied to counsel.

MR. MINSKOFF: That's right and we are now making every effort to obtain those documents that the witnesses now have.

THE PRESIDENT: Very well, you can go on.

MR. MINSKOFF: 1718 is now, I take it, before Your Honors and is marked in evidence?

THE PRESIDENT: That is correct.

MR. MINSKOFF: That was merely to indicate, as the index shows, that Dr. Vetter actually came to the Farbon plant at Leverkusen and had a conference with them concerning his experiments.

The next document, which is NI 9422, is already in evidence.....

I'm sorry, Your Honors - will be introduced as 1705.....

I'm sorry, Your Honors, there is a little confusion here.

THE PRESIDENT: Rectify it and that's all right.

MR. MINSKOFF: With the Court's permission, the document will be offered as the next consecutive number and the confusion will be ironed out later.

THE PRESIDENT: Very well.

MR. MINSKOFF: It's NI 9422 and it's offered in evidence as Prosecution's Exhibit 1719.

THE PRESIDENT: That finishes Book 87.

MR. MINSKOFF: That finishes Book 87, Your Honor, and we will proceed with Book #88.

THE PRESIDENT: We'll not ask you to start now before lunch on 88.

Does the Prosecution have any announcements now?

MR. SPRECHER: Mr. President, I have three record correction which will take just about five minutes.

THE PRESIDENT: That will be fine.

MR. SPRECHER: Mr. President, at the time the Prosecution was offering certain documents in Books 12 and 13, certain objections were made - all in Book 12, I'm sorry - certain objections were made by the Defense at that time on the ground that the English... on account of the German copies given to them either contained errors or were incomplete and, at that time, it was our practice to leave those documents, marked only for identification, and we have, since that time, been able to straighten some of those out and I think we should reoffer them again at this time.

THE PRESIDENT: You may offer them together. That is, all of them that were marked for identification, that have since been... where the discrepancy has since been cleared up, you may just offer them and they will be received in evidence.

MR. SPRECHER: Now, the first is an affidavit of the defendant Ter Meer, which is Prosecution Exhibit 334, for identification. That's NI 5187, and the next is Prosecution Exhibit 339, or NI 6649, an affidavit of the defendant Ilgnor, and the next is Prosecution Exhibit 340, NI 8935. All of these are in Document Book 12. I would like to make one explanation

concerning one affidavit by Ter Meer. It is NI 5187 and it's Prosecution Exhibit 334, for identification. The German is called "Copy of Document NI 5187". That's not exactly correct because the original document, although basically in German, although principally in the German, contained one document which had originally been written in the English and, therefore, the copy of the document here really should be called "Copy and Translation" since, of course, our purpose was to get a completely German version of the entire instrument before Defense counsel. With that explanation, I would like to offer these three exhibits at this time.

THE PRESIDENT: Prosecution Exhibits 334, 339 and 340, heretofore marked for identification only, are now admitted in evidence.

Do you care to say anything about this afternoon? We have left on our bench here now one book, 89. What will we need after lunch?

MR. SPRECHER: I think you have 88 and 89, Mr. President.

THE PRESIDENT: 88 and 89.

MR. SPRECHER: We plan to go forward with the witness Falkenhahn. We have 88 and 89 and the witness Falkenhahn will come this afternoon. I don't know exactly what arrangement can be made. I think Dr. Nolte has a preference which I would like to have him talk over with Mr. Minskoff rather than with me. Then, after that, would come the Degesch documents - these are 82 and 83, and if we start to run out, we'll try to see if we can bring a witness, but I think we'll have enough for this afternoon on that basis.

JUDGE MORRIS: Can you tell us where the Falkenhahn affidavit is found?

MR. SPRECHER: Yes, Judge Morris. That was submitted separately to you and it is the affidavit which you considered particularly in connection with the objection concerning the documents concerning Fuerstengrube and Janina. I don't know exactly what you have done with it since it was an individual document, but I think that will recall it to your attention.

THE PRESIDENT: The Tribunal will now rise until 1:30.

(A recess was taken until 1330 hours.)

concerning one affidavit by Ter Meer. It is NI 5187 and it's Prosecution Exhibit 334, for identification. The German is called "Copy of Document NI 5187". That's not exactly correct because the original document, although basically in German, although principally in the German, contained one document which had originally been written in the English and, therefore, the copy of the document here really should be called "Copy and Translation" since, of course, our purpose was to get a completely German version of the entire instrument before Defense counsel. With that explanation, I would like to offer these three exhibits at this time.

THE PRESIDENT: Prosecution Exhibits 334, 339 and 340, heretofore marked for identification only, are now admitted in evidence.

Do you care to say anything about this afternoon? We have left on our bench here now one book, 89. What will we need after lunch?

MR. SPRECHER: I think you have 88 and 89, Mr. President.

THE PRESIDENT: 88 and 89.

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AFTERNOON SESSION

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: If counsel please, there has been some informal talk, off the record, relative to whether this Tribunal would be in session on next Monday and Tuesday, depending upon whether or not the room would be available to us. According to the information we now have, the Tribunal will be in session on next Monday and Tuesday, as usual. We do not anticipate any different arrangement, but if there is, you will be advised, but please expect to be in session on those days.

MR. SPRECHER: Mr. President, at the request of Dr. Nolte, we shall finish with Book 88 before putting on the witness Falkenhahn. Dr. Flacchauer has given us advance notice that that examination should perhaps take about two hours, but should we be done with the witness Falkenhahn this afternoon, would it be agreeable with Your Honors if we then went into the in chambers sitting which you have suggested?

THE PRESIDENT: If it is anywhere near adjournment time we certainly will do that, because we would like to have ample time for that conference, and we may have to stop even short of the program.

MR. MINSKOFF: With the Court's permission, the Prosecution will now offer into evidence documents from Document Book 88. With respect to the first document in that book, NI 9419, the Prosecution asks that it be offered as its Exhibit 1702, since the present Document NI 12244 in the preceding book which received that number already had an exhibit number, which was 1664. It is suggested that the record should show that the first document in this book has the number 1702.

THE PRESIDENT: Very well.

DR. NELTE: Mr. President, I should be grateful to the Prosecution if they would tell us what Document 9419 is. This document gives the impression of current entries beginning with 8 March 1943, and the heading is: "Tested by SS Obersturmfuehrer Dr. Vetter, Auschwitz." This document has no signature. Where are these entries taken from, so that I can check?

MR. MINSKOFF: If it please the Court, the certificate indicates that it was taken from the I.G. Farben-Hochst files.

DR. NELTE: Where does it say that?
(Certificate is shown to Dr. Nelte).
Thank you.

JUDGE MORRIS: May I make an inquiry about that exhibit while we're on it? You designated it as a "summarization of various reports" in your index. I am wondering if what you really mean isn't excerpts from various reports. In other words, are these quotations that are contained in this exhibit from the reports, or are they somebody's summary of what the reports contain?

MR. MINSKOFF: It's both. From the point of view of the Prosecution, they're actual excerpts, but the excerpts themselves are Farben's summarizations of experiments made by Vetter. In other words, what we have here before the Court is an exact copy of the document which appears in I.G. Farben-Hochst. That document is itself, for their own files, a summarization of experiments made by Dr. Vetter for them.

JUDGE MORRIS: That answers my question. Thank you.

MR. MINSKOFF: The Prosecution now offers NI 9423 as Prosecution's Exhibit 1720 and NI 9424 as Prosecution's Exhibit 1721. With respect to the first of the two exhibits

1720, the Court's attention is merely called again to the awareness of the conditions of the persons upon whom the experiments were made, and with respect to the Document 1721, the fact that it was at another concentration camp, Concentration Camp Mauthausen, as well as Auschwitz.

The Prosecution now offers NI 9425 as Prosecution's Exhibit 1722 and NI 12449 as Prosecution's Exhibit 1723, pointing out that they urge at I.G. Farben-Hoechst and Leverkusen that the experiments be continued even though they are aware, as appears from these documents, that their validity or effectiveness is not particularly good.

The Prosecution offers NI 9641 as Prosecution's Exhibit 1724 and calls the Court's attention to page 17 of the English and 23 of the German, where it is indicated that, as late as June 1944, they are still pushing experimentation by Dr. Vetter of both products, Aeridin and Rutanol.

The Prosecution offers NI 9428 as Prosecution's Exhibit 1725, without further comment.

The Prosecution also offers NI 9429 as Prosecution's Exhibit 1726. Of particular interest in this document is the urging by the Farben representatives that in issuing his report Dr. Vetter should not mention that some of the experiments were made solely for the purpose of testing compatibility.

The Prosecution offers, without comment, Documents NI 9430 as Prosecution Exhibit 1727, NI 9444 as Prosecution's Exhibit 1728, and NI 9431 as Prosecution's Exhibit 1729.

The Prosecution also offers, without additional comment, NI 11421 as Prosecution's Exhibit 1730 and NI 9432 as Prosecution's Exhibit 1731.

The next six documents are offered to show the dispatch

of further experimental material, as late as July 1944,
right on through to February 1945.

The Prosecution offers in evidence NI 9437 as Prosecution's
Exhibit 1732, NI 9438 as Prosecution's Exhibit 1733, NI 9439
as Prosecution's Exhibit 1734, NI 9440 as Prosecution's
Exhibit 1735, NI 9441 as Prosecution's Exhibit 1736, and
NI 9443 as Prosecution's Exhibit 1737.

With respect to the next document, the Prosecution has
been informed - that is NI 12450 - by attorney for the
Defense that the Vetter involved in the letter is not the
same Dr. Vetter heretofore referred to in the preceding
documents, and upon that information from the attorney for
the Defense, the Prosecution is withdrawing this document
and not offering it into evidence.

The Prosecution now offers NI-12447 as Prosecution's Exhibit 1738. The index is self-explanatory, showing the release of Dr. Vetter from the employment of I. G. Farben. The last document in the book, NI-12453, is offered as Prosecution's Exhibit 1739 without comment.

DR. NELTE: Nelte for Hoerlein.

Mr. President, I object to the submission of Document NI-12453. This is an excerpt from penal records in a trial of Glas and others, and the fifth name is Dr. Helmut Vetter. If the submission of this document in this case is to have any meaning, it can only be to give the impression that Dr. Vetter was condemned to death because of his experiments which are supposed to have had fatal results. The judgment gives as reason for the indictment and content of the judgment that Dr. Vetter is convicted of being "responsible for many deaths."

I believe that the Prosecution would say if asked that the conviction of Dr. Vetter in this case had nothing to do with the experiments, and also that the incidents concerned here happened in Mauthausen, not in Auschwitz. If the Prosecution should not confirm this, they should be requested to submit the entire records.

THE PRESIDENT: Just a moment. What is the theory of the Prosecution as to the materiality of that evidence?

MR. MINSKOFF: If it please the Court, the acts which were done by Dr. Vetter are relevant to the issues before this Court. The conviction of Dr. Vetter for being responsible for many deaths would be relevant to show the kind of person Dr. Vetter was, to show whether he was the kind of person who would have artificial infection of human beings, since he was convicted of killing human beings. Now, I don't know -- I am perfectly willing to try to find out -- whether the conviction there actually did include experimentation of the type we are referring to in this case. The record didn't indicate that. I haven't seen such indications. The representations made by Counsel,

if that is the case, we will so stipulate, but the document would, nevertheless, be relevant for the other purpose mentioned.

THE PRESIDENT: Well, assuming that to be true — that he was convicted and condemned to death for the wrongs indicated on the fact of the record — that then is putting that question in issue. Would Counsel for the Prosecution want to assume the responsibility of saying that the defendants might offer evidence to show that he was a most magnanimous and philanthropic person and that when they made their contact with him, he had not been convicted of any death sentence and that they were moved by good impulses? What I am trying to suggest is, isn't that just opening the door to a collateral inquiry that might take hours and hours, and, perhaps, days of time here and contribute nothing whatever to the ultimate facts that this Tribunal is concerned with?

MR. MINSKOFF: On the stipulation that there be no evidence offered as to all the good impulses that the defendants had, we would be perfectly happy to withdraw the exhibit.

THE PRESIDENT: Well, you cannot bind them as to their evidence. You can't make them make a stipulation in chance on commitment. They don't need to tell us anything about their defense until after you close your case.

MR. MINSKOFF: The only point I make, Your Honor, is that if evidence comes the other way, the evidence should also show the conviction of Dr. Vetter.

THE PRESIDENT: That might be good rebuttal. I wouldn't say about that, but I am at a loss to see any materiality to this issue here whatsoever.

The objection will be sustained.

MR. MINSKOFF: If it please the Court, that is the last document in Book 88, and at this point we ask leave to call a witness in connection with Book No. —

THE PRESIDENT: What witness is that?

MR. MINSKOFF: It is Falkenhahn, with reference to documents on Fuerstengrube contained in the two books 80 and 81. This particular affidavit is to be added to Book 81.

THE PRESIDENT: The Marshal may bring in the witness. I assume this witness is a German national.

MR. MINSKOFF: That is Prosecution's Exhibit 1517, found in Book 81. May I correct the record? I misstated the number. It is Exhibit 1556 in the same book.

THE PRESIDENT: Thank you.

GUENTHER FALKENHAHN, a witness, was examined and testified as follows:

THE PRESIDENT: Mr. Witness, will you please remain standing for the purpose of being sworn. Raise your right hand, say, "I", and state your name.

THE WITNESS: I, Guenther Falkenhahn —

THE PRESIDENT: And now repeat after me: swear by God the Almighty and the Omniscent that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath)

THE PRESIDENT: The witness may be seated.

The Prosecution may proceed.

DIRECT EXAMINATION

BY MR. MINSKOFF:

Q What is your full name?

A Guenther Falkenhahn.

Q And where do you reside?

A In Bochum, at the present.

Q With respect to your affidavit, Prosecution's Exhibit 1556 in evidence, are there any corrections or additions you wish to make at the present time?

A No.

MR. MINSKOFF: There are no further questions for the Prosecution, Your Honor. The witness is with the Defense.

THE PRESIDENT: The Defense may cross-examine the witness.

DR. FLAECHEMER: Dr. Flaechner for Buetefisch. I ask the Tribunal's permission to direct a few questions to the witness.

CROSS EXAMINATION

BY DR. FLAECHEMER:

Q Mr. Falkenhahn, you have your affidavit before you?

A Yes.

Q In this affidavit you state that you made efforts to procure labor for the development of the mines under your supervision and that you personally went to the president of the Landes Labor Office yourself, is that correct?

A Yes.

Q Is it correct that as a result of the rapid industrialization in Eastern Upper Silesia the situation on the labor market was very tense?

A Yes.

Q Could the president of the Landes Labor Office comply with your request for labor?

THE PRESIDENT: Just a moment, please. The answer may be out.

MR. MINSKOFF: If it please the Court, the affidavit of the witness contains information concerning the management and the control of Fuerstengrube. It does not contain information as to conditions at Fuerstengrube or to the procurement of labor except as indicated in the affidavit. Any information that is submitted which the Defense wishes to elicit from the witness with respect to things not in the affidavit probably belongs in the Defense's case and not in the cross examination of this witness.

DR. FLAEGHSNER: Mr. President, the Prosecution incorporated into the affidavit the description of this witness about the procurement of labor of the mines under his jurisdiction, and the questions that I put to him are strictly confined to the framework of this subject matter, and therefore I do not believe that the Prosecution is entitled to make an objection in this regard.

THE PRESIDENT: The cross examination has hardly proceeded to the point where it is clear what Counsel is undertaking to develop. On the theory that this may be preliminary, the objection will be overruled.

BY DR. FLAEGHSNER:

Q Witness, you said that only during the first years could your requests for labor be satisfied. Am I correctly informed that in the course of time in the mining industry the manpower, which originally consisted of Germans, foreigners, and prisoners of war, was not sufficient to increase production in the mines, as the planning agencies of the Government demanded?

A For promotion our allotment of Russian prisoners of war especially was adequate, but not for newconstruction, especially in 1943 and even more in 1944.

Q Very well. Under paragraph 15 of your affidavit you say that you were always opposed to the use of concentration camp inmates. I would like to ask you, was there among your acquaintances any employer who would have preferred to use inmates as opposed to free labor?

A No.

MR. MINSKOFF: I object to the question, Your Honor. The questions should be factual only.

THE PRESIDENT: Really it does call for a conclusion, but if he knows the basis for a conclusion, it might be justified. This is really after all, cross examination. Looking to paragraph 15 of the affidavit, that would seem to be proper. The objection is overruled.

Did the witness answer your question, Counsel?

DR. FLAEGHSNER: Yes, Mr. President. The witness said that he did not know any employer who would not have preferred to work -- with free workers.

THE PRESIDENT: Very well.

BY DR. FLAEGHSNER:

Q Thank, Mr. Witness, I am correct in understanding your answer to mean that the gentlemen of Farben, as far as you know, were satisfied to employ inmates only because of the special emergency that existed?

A I assume so.

Q Could inmates be procured in any other way than by the mediation of the Supreme Planning agencies? In order to make my question more understandable, the assignment of inmates, if I am informed correctly, was possible only if the supreme planning agencies had approved of such assignment, isn't that right?

THE PRESIDENT: You may answer, Witness.

A I got no prisoners from the Landes Labor Office because they were to Berlin, through the Economic Group Mining. We received the prisoners at the Fuerstengrube after we had repeatedly mentioned in the discussions which we had with the gentlemen from the Auschwitz plant; and since I already knew that before that, for example, in the mine in Brzieszcze prisoners were also employed. Then the I. G. Farben gentlemen, who already had prisoners at that time, arranged this for us.

BY DR. FLAEGHSNER:

Q You said just now, Mr. Witness, that you went to the Economic Group Mining Industry in Berlin. That is what I mean when I say approval of the supreme planning agencies, because you were under the Economic Group Mining Industry.

A In certain respects, yes.

Q All right. You just mentioned the Brziescze mine, if I understood you correctly, That is an enterprise of the Hermann Goering Works?

A Yes.

Q In Eastern Upper Silesia?

A Yes.

Q Were inmates used in Jawischowitz also?

A I believe that belongs to Brziescze.

Q Witness, you say in your affidavit that you did not personally endeavor to obtain inmates for labor. From the necessary discussion of the delivery dates between Fuerstengrube and the Farben plant, did it not arise as a necessity that the competent experts voiced their worries about labor commitment to each other?

A You mean discussed them with me? Of course we discussed them.

Q And if I understand you correctly, then on such an occasion you also expressed to the gentlemen of Farben that you could not manage to operate with your your scarcity of labor?

A Yes.

Q Did you also tell the gentlemen about the steps that you had undertaken with the Economic Group Mining Industry?

A Yes, of course. All the steps that we had taken to get labor.

Q Did not the plant leaders of both parties, that is to say, the plant leaders of the mines under your jurisdiction and the gentlemen from Farben Auschwitz who negotiated with these gentlemen, always have to conclude in their discussions that manpower was lacking for the delivery dates they had been given unless they employed inmates?

A I did not quite understand your question. In our joint discussions, you mean, the gentlemen of I. G. Auschwitz had to see

that our work could not progress if we did not use prisoners?

Q That is what I meant.

A That is right.

Q Isn't it true, Mr. Witness, that in Upper Silesia the use of inmates was always, the last recourse, which was taken by order of the Gauleiter or by order of Goering, as in the case of coal?

A As far as I know, neither the Gauleiter nor Goering had anything to do with the commitment of labor. At any rate, I never talked to the Gauleiter about labor commitment. To my recollection, aside from Fuerstengrube and in 1944 Guenthergrube, Brzieszcze, and Auschwitz, prisoners were employed only in the Javorzno mine, at a new electricity construction site near Wolfen, and in a railroad repair shop near Gleiwitz.

Q How about Blechhammer?

A Yes, that is right. Blechhammer. I was only there once, but I believe Blechhammer did have concentration camp inmates.

Q How about Marktstaedt, the Krupp Works?

A I don't know. I don't know them.

MR. SPRECHER: Mr. President, I have only a suggestion. At least as the translation is coming through, there is some difference between inmates and prisoners, and since there are involved in the labor commitment problems of this area, both concentration camp inmates, prisoners of war, and compulsory foreign labor, I am wondering if we could just ask both Counsel and the witness to make very clear when they are talking about concentration camp inmates and when about prisoners. I hope you will pardon my suggestion.

THE PRESIDENT: That suggestion might be helpful in shortening the examination, because otherwise it might invite redirect examination from the Prosecution.

BY DR. FLAEGHSNER:

Q Mr. Falkenbahn, did you have a camp Waldeck for free labor at your Fuerstengrube mine?

A I can't tell you what kind of people we had at the Waldeck camp. We had quite a number of camps, and the inmates of these camps change frequently. We had a camp Waldeck at Fuerstengrube. I believe for a while we had Ukrainians in that camp, but I don't know whether that was at the end or not.

Q No, I am speaking about the beginning, and I wanted to ask you, was there besides this camp Waldeck for free workers a so-called police camp which housed civilian Jews?

A Yes.

MR. MINSKOFF: At this point the Prosecution wishes to enter its objection to testimony of Counsel as to facts which do not appear in the affidavit as to camp Waldeck, the kind of inmates that it had. If there is any discussion to be made of that, which is not in the affidavit now, that will probably be material for the Defense's case, rather than for the questioning on cross examination of this witness.

DR. FLAEGHSNER: I believe that the Prosecutor is not quite correct. The question is how the inmates came to Fuerstengrube, and this question is initiated by my first question, this entire complex of questions is introduced by this question of mine. I want to point out that, first of all, the civilian Jews were working at Fuerstengrube. They were suddenly changed by order of Himmler, into concentration camp inmates, and remained at the mine.

MR. MINSKOFF: If it please the Court, if the Defense is interested in finding out how labor was procured, that question could be asked very simply and directly without putting into the record the evidence of Counsel and inquiries concerning matters which are not in the affidavit at all.

THE PRESIDENT: That matter could be directly determined, and since it does appear to be without the scope of any of the language of the affidavit, the objection is sustained.

BY DR. FLAUCHSNER:

Q Witness, is it correct that the Jews who were working at Fuerstengrube up to that time were suddenly transferred into a concentration camp? Can you remember that?

A The Jews that we had before, in my opinion, stayed there to a certain extent and came into the inmate camp. I can't remember that exactly.

Q Isn't it true that you were asked by the Farben people in Auschwitz to prevent these trained workers from leaving?

A I don't remember.

Q If I understood you correctly just now, did these relatively free laborers become concentration camp inmates simply because the camp in which they were housed was placed under SS administration, and then the workers were subordinate to the disciplinary measures of the SS and to the concentration camp administration?

A Yes, that is my opinion.

Q Then these concentration camp inmates were placed in the Fuerstengrube without any of your or Farben's doings, because they were there already?

A Yes; part of these Jews, no doubt, became concentration camp inmates.

Q Herr Falkenhahn, I now come to the Janina-Grube. Was not it true that in the beginning -- and when I say "beginning", I mean the period of time in which the Janina-Grube was administered by commissars, from Fuerstengrube O- there were British prisoners of war working there?

A Yes.

Q. Were these prisoners of war replaced because their work was in no way satisfactory?

A. I cannot remember exactly why they were taken away. As far as I know, we had too few British prisoners of war and we could not get any more Englishmen, I believe.

Q. They were replaced because the requested supplementation and increase of the number of workers was not possible?

A. That is my recollection.

Q. These laborers had to be replaced by others, isn't that true?

A. Yes.

Q. And how were they replaced?

A. We were given concentration camp inmates.

Q. There simply were no other laborers, is that right?

A. I believe there were no more Russian P.W.'s any more. Those were the ones we liked best.

Q. Then one can certainly not say that the use of these inmates was by order or with the participation of Farben? One must say that it simply resulted from the labor market.

MR. SPRACHER: Ah.....

THE PRESIDENT: Objection is sustained. That is in the nature of an ultimate conclusion, which is for the Tribunal to draw from the evidence.

BY DR. FLAEBESNER: (Counsel for defendant Bueterfisch)

Q. Mr. Falkenhahn, in your affidavit you state that Farben in Auschwitz helped you with their experience in your preparations for receiving inmates.

A. Yes.

Q. May I ask you: Didn't you also, on your part, try

to do everything within your power to secure the orderly housing and feeding of these people?

MR. MINSKOFF: That question is objected to, Your Honor. Again the Defense is going into questions, it is pretty obvious, as to the conditions which prevailed, as to which questions this man is not the Prosecution's witness. He is on the technical questions of management, of control of ownership, of connections with I. G. Farben -- and not as to conditions that prevailed there. He himself was manager of the Fuerstengrube mines.

DR. FLAEBCHNER: May I answer that briefly? The affidavit, under paragraph 14, says that "I. G. Farben not only arranged the allocation of concentration camp inmates for Fuerstengrube but also supported us in the solution of all problems arising out of the allocation of concentration camp inmates."

And then it goes on to speak of assistance in construction and in feeding and housing, etc. That is not a question which affects only the management of Fuerstengrube, but it is a technical question about commitment of inmates.

MR. MINSKOFF: If the Court will refer to paragraph 14, it will see that each sentence in that paragraph refers to the connections that I. G. Farben had with Fuerstengrube in connection with feeding, in connection with housing; everything else. It does not refer to the conditions themselves. Those things are properly questions for the Defense to bring in their own affirmative case. If they want to make this man their witness in this case, they may call him at that time.

Every sentence here refers only to their connections, their associations, to show that Farben had involvement in

connection with these mines, not as to whether conditions were good, bad, or indifferent.

THE PRESIDENT: There doesn't appear to be anything in this affidavit relating to the conditions existing in the concentration camp. This affidavit does purport to be limited to matters of management policy, or directions, and so forth. That objection is well taken. It is quite apparent that the line of inquiry that counsel is conducting is anticipating a matter that would probably be in the scope of the defense.

The objection is sustained.

BY DR. FLAEBHSNER:

Q. Witness, what did you do on your part in regard to housing and feeding these concentration camp inmates?

THE PRESIDENT: Counsel, are you predicating that question upon the statements contained in paragraph 14 of this affidavit?

DR. FLAEBHSNER: Yes, Mr. President -- 14 and 15.

THE PRESIDENT: Well, now that --

DR. FLAEBHSNER: "On the other hand, we were sorry for them and we tried to alleviate their hard lot as far as possible," it says,

I asked the witness about the contents of his affidavit. I am not of the opinion that the Prosecution is right when it asserts that it had incorporated into this affidavit only facts about the management of the Fuerstengrube and its relationship to Farben. The affidavit goes much further than that.

THE PRESIDENT: Well, this objection will be over-ruled. The witness may answer this question. But we would say that the field of inquiry is pretty narrow within paragraphs 14

and 15 in this affidavit. It doesn't go into any details about conditions. But, upon the theory that there is a statement here that he felt sorry for the laborers and tried to alleviate their conditions, we will permit this question.

You may answer, Mr. Witness.

DR. FLAECHEMER: Thank you, Mr. President.

Did you answer the question, Witness?

WITNESS: Would you mind repeating the question?

BY DR. FLAECHEMER:

Q. I asked you what you, on your part, did in order to secure the feeding and housing of the inmates that were allocated to you?

A. At Fuerstengrube, as well as at Guenthergrube, we built the camps -- the managements of the two installations did. As far as food was concerned, we agreed with the gentlemen of the I. G. Farben Auschwitz that they would take care of that, because they had more experience.

Q. Do I understand you correctly? The construction engineers of Auschwitz had experience in the erection and equipment of barracks and similar things, and for that reason you asked for their advice?

A. Yes. There were special regulations, as I recall, about the housing of concentration camp inmates.

Q. Is it true that the food for your camps was furnished by a firm by the name of Brummel & Son?

A. That is true. There were several firms, including the one you mention.

Q. And is it also true that you were not quite satisfied with the shipments of this firm?

A. Yes; they were not quite honest about the quantities of food shipments they delivered.

Q. And did you, for that reason, ask Farben plant at Auschwitz to carry out the feeding of those inmates who worked at Fuerstengrube in order to improve the food problem there?

A. Yes, that was one of the reasons.

Q. Witness, when the inmates were used for work, who determined where they should be used?

A. I did not understand your question.

Q. Who determined where they should be used? Were the foremen, mining inspectors, etc., their superiors, responsible? Could you please tell me that?

A. The prisoners were divided into special groups and were assigned to the work to which they were suited and the places where they were especially needed. Some of them worked for firms, laid tracks or did other types of work. They worked under the supervision of the supervisors, and in general they were guarded by SS-men. As far as they were employed underground, they were supervised by the mining foremen.

Q. And who was over the foreman?

A. The manager of the mine.

Q. And who was over the manager of the mine?

A. The director of the plant.

Q. And were these gentlemen all consolidated in the management of Fuerstengrube?

A. No.

Q. Who then?

A. I alone was the manager.

Q. Who was over the director then?

A. I was.

Q. That was you then?

A. Over the director was I, yes.

Q. Well, then my point of view is correct, that you were the superior of the directors?

A. Yes.

Q. And that they were the superiors of the managers of the mines, and so on?

A. Yes, that is right.

Q. You alone were the business manager of Fuerstengrube G.m.b.H., is that right?

A. Yes.

Q. The other gentlemen mentioned by you in your affidavit, if I am correctly informed — and that can also be seen from the material submitted the Prosecution — were Prokuristen? Is that correct?

A. Can you tell me where that is? I don't remember which ones I mentioned.

Q. You mentioned, under paragraph 5 — no, no; it is under No. 7. You mentioned Dr. Ottermann, and then again, under paragraph 13, second sub-section, you speak about the Prokurists Duellberg, Dr. Ottermann, and Dr. Hermann.

A. Yes.

Q. You say that these gentlemen were Prokurists?

A. Yes; my closest co-workers.

Q. As business manager of a G.m.b.H., juridical person, you were the plant leader, who had to deal with the labor authorities, with the trustee, with the labor office, and so on? Is that right?

A. It is true -- with the Main Trustee Office. I assume that that is what you mean.

Q. No, I mean the Trustee for Labor, for instance, who controlled wages, salaries, and so on.

A. Oh, the Labor Office, for example, the mining authorities; I was not able to take care of these things personally, only in very important, basic decisions. Bergassessor Duellberg, mostly, took care of these things. If there was any special difficulty, then I was called in, and I, usually personally, went to the superior agencies, the chief mining office or the Landes Labor Office, and so forth.

Q. Quite correct, Mr. Falkenhahn, you were the superior of these gentlemen; but if these gentlemen negotiated with these agencies, they did so in their capacities as Prokurists of the GmbH, your subordinates?

A. Yes; Duellberg, as plant manager, was responsible to the mining authorities, and the manager of a mine sometimes had to take care of certain things directly because he was responsible to the authorities, not I or Mr. Duellberg; that depended on the individual case.

Q. Mr. Falkenhahn, the German laws concerning the mining industry demand the observance of certain safety regulations for mining operations. Were you not responsible to the mining authorities for the observance of these safety regulations?

A. No, it was primarily the man who was in charge of the operation of the mine. That is regulated by the General Mining Law and by the Mining Ordinance. If an accident occurs, the manager of the mine is responsible below ground; above ground, it is the machine operation manager. Only to the extent that I might have given orders or prevented the execution of orders of the mine manager -- Mr. Duellberg or I -- then we would have been held responsible in case of an accident.

Q. Very well. Please tell me, Mr. Falkenhahn, did Fuerstengrube G.m.b.H. have an independent administration, with its own personnel department and a department which took care of social welfare matters?

A. That changed in the course of the years. When the Fuerstengrube

G.m.b.H. was founded there were no special officials, with the exception of Dr. Ottmann. These departments of Fuerstengrube were gradually built up. Up to the end there was a certain element of one man holding more than one job. For instance, the machines were taken care of by the machine department in Pless, and the social welfare matters were taken care of by a certain Dr. Ptock — for both companies, for Pless and Fuerstengrube.

Q. Fuerstengrube administered for Pless, too, if I understand you correctly?

A. No, it was the other way around. Dr. Ptock was employed by Pless, and he was in charge of the social welfare measures for Fuerstengrube as well.

Q. Then these departments also were responsible for working conditions, is that right?

A. The social welfare department had virtually nothing to do with working conditions. That was up to the plant manager — wages and so forth. But to take care of the refugees — I mean to say, for the inmates — also for the PW's, whether that was clothing or additional food rations or musical instruments or reading material — that was up to the Social Welfare Department.

Q. And that department was directed by the gentleman mentioned by you?

A. Yes.

Q. Mr. Falkenhahn, under paragraph 15 of your affidavit, in the last sub-section, you also mention that you instituted a premium system according to which the inmates could, if they worked well, obtain useful articles.

Did this mean that the inmates were required to work faster or produce more than other workers?

A. No.

Q. Did you take any precautions to see to it that if a superior

beat or mistreated an inmate he should be reported to the plant manager and to you through channels so that you could remedy the situation?

MR. MINSKOFF: Objection is made to that question, if it please the Court. Again he is going into the field of the conditions at the camp, or punishments at the camp, or initiative in making punishment. That appears nowhere in the affidavit.

DR. FLAEBCHNER: Mr. President, may I say in this connection that paragraph 15 of the affidavit says quite distinctly: "We were aware that the concentration camp inmates were unfit for the work we needed. On the other hand, we felt sorry for them, and we tried to alleviate their hard lot as far as possible."

The least alleviation which such an inmate might expect would be just treatment, and I asked the witness quite simply what measures he had instituted to make sure that just treatment was meted out to these inmates.

THE PRESIDENT: Counsel, I am going to overrule the objection to this question and let the witness answer it. But I should like to observe that it does occur to us that this witness has thrown about all the light that he is capable of throwing upon the somewhat narrow field of this affidavit.

I think I can speak for all of my associates when I tell you that we are not very much impressed with the fact that this latter part of the cross-examination is developing anything that we would deem very valuable in the determination of this case.

Witness, you may answer that question.

THE WITNESS: Both in writing and orally I frequently issued instructions to the effect that no workers -- whether prisoners, or our own workers, or concentration camp inmates -- could be beaten. I believe that it seldom happened. I can only mention that in one case -- it was not a concentration camp inmate but a Pole who was beaten -- I immediately demoted the official concerned and transferred him to another mine, al-

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though I liked him very much, personally. I would have done exactly
the same thing if he had beaten an inmate.

(Dr. Flaeschmar)

Q Herr Falkenhahn, would you please turn to paragraph 5 of your affidavit? You say there that Farben was more or less the entire preneur of Fuerstengrube, and you give as your explanation that Farben, as the possessor of the stock majority, appointed the chairman of the Aufsichtsrat and the majority of the Aufsichtsrat members, and that in this way it had a decisive influence on the operation of the Fuerstengrube, GmbH.

Can you cite one resolution of the Aufsichtsrat in which the members who in your opinion represented Farben interests outrated the other members?

A I cannot remember that there was ever a vote taken at the Aufsichtsrat meetings.

Q Yes. I should like to ask you further, can you cite a single case in which Farben forced the Vorstand of the Fuerstengrube to undertake certain measures?

A If any such thing had been against my conscience, I would certainly not have done it.

Q Then I do not have to ask you what you would have done against this. You say you would not have done it at all?

A That's right.

Q You say further in your affidavit that you frequently seen Dr. Buetefisch, the Chairman of the Aufsichtsrat of Fuerstengrube. That is paragraph 12, Mr. President. I should like to ask you, did Dr. Buetefisch ever interfere in your management of Fuerstengrube or prescribe anything for you to do?

A No, Dr. Buetefisch never interfered in the local management of the plant.

Q In your affidavit, Mr. Falkenhahn, you speak about construction, discussions which the Farben people called. I should like to ask you whether you were not perhaps wrong here, in that you mean the coal

discussions which Farben's Dr. Brauss called together with you?

A I mean coal discussions, just as much as construction discussions. Of course Auschwitz had great interest in getting coal as quickly as possible. In other words, they wanted our coal construction to be finished as soon as their industrial construction. To that extent, the initiative came from them.

We had meetings; we discussed the question of the delivery of coal, and in the same connection we discussed construction too, of course, and we talked about our difficulties, we told them why construction was so slow, and they were always very friendly and helped us.

Q Mr. Falkenhahn, do you know that the negotiations which finally led to the foundation of the Fuerstengrube GmbH had already begun in the spring of 1940?

A The negotiations with me personally, as far as I recall, took place in the first days of July 1940.

Q 1940?

A That's right.

Q Can you remember, Mr. Falkenhahn, that at that time there was no talk about an Auschwitz plant at all?

A It is very difficult for me to answer that question. I really do not know when the construction of Auschwitz was begun.

Q Do you agree with me if I say that Farben, in the course of negotiations with the Fuerstlich Pless'sche Bergbau, A.G., discussed in general the development of coal resources in Eastern Upper Silesia or for the development Farben in that area?

A Yes, that was emphasized.

Q You say further in your affidavit here, Mr. Falkenhahn, that later Farben looked around for other sources of coal, and that they cast their eye on the Janina mine. Is it correct that it was you, by virtue of your extensive knowledge of Upper Silesian mining conditions, who made this suggestion?

A As I recall, it was like this. The expansion of the Auschwitz plant was planned, and it was discovered that the coal supply was still too small, Fuerstengrube and Guenthergrube too. I. G. Farben Auschwitz had to find a source of coal for the enormous plant. The Janina mine was right on the other side of the Vistula, across from the Auschwitz plant. The shaft of the Janina mine could be connected with Auschwitz by a cable car running only a few kilometers. Of course, in that case, when they heard that the Trusteeship Office East wanted to sell coal mines, they examined this possibility, and I personally, on behalf of Dr. Bueteffisch, and I believe later Dr. Bueteffisch himself negotiated with the head of the Main Trusteeship Office East, to have the Janina Mine turned over to the Fuerstengrube.

Q I shall come to that later, Mr. Witness. I am only concerned with finding out whether it is not true that the reference to the Janina mine was made by you to Dr. Brauss, at the very beginning of 1942.

THE PRESIDENT: Counsel, in view of what the witness has said about the reasons that prompted this transaction, it impresses me that that is a very, very minute detail that would not be of any significance whatever, as to which one made the approach to the Trustee first, and in the light of what he said is too small circumstance to pursue very far.

DR. FLEISHNER: Yes, Mr. President.

Q Witness, you do say in your affidavit that you had no interest in the Janina mine, but it is not true that Farben and Fuerstlich Pless'sche Bergwerk A.G. agreed that the Fuerstengrube GmbH should buy the Janina mine?

A You are right only insofar as I. G. Farben and Pless participated in the Fuerstengrube, but the Pless'sche Bergwerk A.G. had no interest whatever in buying the Janina mine. No interest in it whatever.

Q If such a purchase had been effected, would that not have also meant that Pless would have owned 49 per cent of Janina?

A If Fuerstengrube had bought it, but that would have been disagreeable to Pless because of the financial arrangements.

Q Is it correct, that the Janina mine, by order of the Main Trusteeship Office East, was given to the Fuerstengrube only to be administered by a commissar?

A Yes, 1 January 1943, I believe.

Q Did that mean that the management of Fuerstengrube became the plant loader of Janina?

A Yes.

Q You say further in your affidavit that the signature under the contract of purchase for the Janina mine was delayed by you. Does it refresh your memory, if I tell you that the purchase contract could not be signed for reasons of foreign currency control?

A There were other reasons with me, or with Pless, for this request to delay the signature.

Q I have to ask you, Herr Falkenhahn, in whose name was the Janina mine entered?

A Legally was the property of the Main Trusteeship Office East, I am sure, or the French Mining Company.

Q The owner was a French mining company; is that right? And the Trusteeship Office East was able to dispose of this enterprise. Is that correct?

Mr. President, if the Tribunal desires to have the recess now, I have only about five or six questions.

THE PRESIDENT: Very well. Before we rise, the Tribunal would like to observe that we really feel that our time could be devoted to something that would be more helpful than to prolong this cross-examination very much longer. Now, we are not going to be arbitrary at all and forbid any cross-examination, but we have just reached one

of those stages that occur from time to time, when we become somewhat fretful that the witness has practically exhausted the subject, and that not much more light is going to be thrown on his affidavit.

We would appreciate it if counsel for the defense would make a conscientious survey of the situation and try to restrict the further cross-examination of this witness to something that is of some considerable importance.

MR. SPRECHER: Mr. President, I was wondering if we recessed now, and there are only a few questions are left — I certainly do not think there is much re-direct — if it would not be more agreeable if we finished up and then perhaps afterwards had time for the in-chambers discussion?

THE PRESIDENT: Well, that probably is not too long a time to devote to that problem. As soon as we finish this cross-examination, we will recess the session and have an informal conference with counsel, if that is agreeable to all concerned. Very well.

The Tribunal will now rise for its recess.

(Court in recess until 1515 hours.)

DR. FLAEGHSNER: Mr. President, I am probably in agreement with the Tribunal that paragraphs 11 to 14 of the affidavit, on which I originally wanted to question the witness, are of no relevance to the Tribunal, and therefore, I shall not ask any further questions.

THE PRESIDENT: Now, gentlemen, do any other defense counsel have any questions that you consider important from the standpoint of your clients that you wish to ask this witness? We don't want to foreclose it. We just indicated what our general conception of the course of this cross examination was. Please do not feel embarrassed or that you are going to be chastized by the Tribunal. If you have anything else that you consider important it's your privilege to ask it. If there is no further request for cross examination, does the Prosecution desire to ask any further questions?

MR. MINSKOFF: There is no re-direct, if it please the Court. There is one question that was asked that might require some clarification. They refer to Vorstand — that's the way it came through the microphone — with respect to Fuerstengrube. I think the Defense will stipulate that there is no Vorstand in Fuerstengrube and that the manager is the witness before the Court.

THE PRESIDENT: Does any member of the Defense counsel question or challenge that statement of the Prosecution? Then we shall take it as stipulated as stated. Is that all?

MR. MINSKOFF: That is all, your Honor.

THE PRESIDENT: Then the witness is excused from further attendance, and the Marshal will escort him away.

MR. MINSKOFF: If it please the Court, before the Court is adjourned I would like to complete the record on Fuerstengrube by offering without comment three documents to be added to Book 81.

THE PRESIDENT: Very well.

MR. MINSKOFF: NI-11057....

THE PRESIDENT: Where are those documents?

MR. MINSKOFF: Those are documents which have been distributed and were to be added to Book 81.

THE PRESIDENT: Do we have them?

MR. MINSKOFF: I believe the Court has them.

THE PRESIDENT: Oh, yes. Now, will you please state the number again?

MR. MINSKOFF: NI-11057.....

THE PRESIDENT: Yes.

MR. MINSKOFF: As Prosecution's Exhibit 1740 NI-10906 as Prosecution's Exhibit 1741, and NI-12385 as Prosecution's Exhibit 1742. That is all, Your Honor, thank you.

THE PRESIDENT: What is this document that was put on our desk during intermission? NI-12451-A?

MR. MINSKOFF: Your Honor will recall that during the presentation of the medical books the question was raised by Defense Counsel with respect to certain documents appearing or referred to in the affidavit of the witness affiant Feikel. We now have processed the documents from Feikel, and we distribute it to the Court, and we ask that it be marked in evidence as Prosecution's Exhibit -- I am not sure how the record should show it Your Honor -- whether it should be part of the Exhibit Feikel or whether it should have a new exhibit number.

THE PRESIDENT: Can you determine that now?

MR. MINSKOFF: The Court can consider this as part of the Exhibit Feikel.

MR. SPRECHER: Mr. President, I suggest that since the exhibit numbers are --

THE PRESIDENT: You had better consult with the Secretary and see how he wishes to carry it.

MR. SPRECHER: Mr. President, since when exhibit numbers are changed some confusion can come about by referring back in the record

to exhibits which have since had some modification to them, I suggest we have a new exhibit number

THE PRESIDENT: What is your exhibit number?

MR. MINSKOFF: That will be Prosecution's Exhibit 1743.

THE PRESIDENT: Then it will be considered in connection with Exhibit 1716, NI-12451?

MR. MINSKOFF: That's right, your Honor.

THE PRESIDENT: Very well. Now, is there anything else before we recess, from the Prosecution?

MR. SPRECHER: Tomorrow we will proceed with Document Book 89 and with Document Books 82 and 83. We shall endeavor to line up one or two of the witnesses who are available, in case we don't get through the day -- in case we don't get through the day -- in case we don't get through the day without witnesses.

THE PRESIDENT: If there are no other announcements at this time, the Tribunal will now recess until 9:30 tomorrow morning.

(A recess was taken until 0930, 26 November 1947)

Official Transcript of the American Military Tribunal No. VI in the matter of the United States of America against Carl Krauch, et al, defendants, sitting at Nurnberg, Germany, on 26 November 1947, 0930-1630, Justice Shake, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI. Military Tribunal No. VI is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the court.

THE PRESIDENT: You may report as to the defendants, Mr. Marshal.

THE MARSHAL: May it please Your Honors, defendants Schmitz and Jaehne are absent sick. The other defendants are present in court.

THE PRESIDENT: The defendants who are ill will be excused from attendance for the day.

The Tribunal would like to take a moment to make an announcement. After a conference with representatives of Counsel on last evening a schedule with reference to the future progress of this case was worked out. The Prosecution has indicated that it will probably close its case on Monday, December 1st or Tuesday, December 2nd with the exception of producing certain witnesses for cross examination. The Tribunal has concluded that, as to those witnesses of the Prosecution whose affidavits have been offered in evidence and who have not been cross examined by that time, it will transfer the supervision of the cross examination of those witnesses to its commissioner; and the Tribunal has in mind that at the conclusion of the Prosecution's case in chief with that exception on Monday or Tuesday, December 1st or 2nd, as the case may be, the Tribunal will then recess until Thursday, December 18th and will set aside Thursday, December 18th and Friday, December 19th to hear the opening statements of the Defense. At the conclusion of that session of Friday, December 19th, the Tribunal will again recess until Monday, January 12, 1948, at which time we shall expect to proceed with the orderly hearing of the Defense's case.

Now there is one very important thing that I should like to call to the attention of each and every member of the Defense staff, and that is

that it is necessary that you get into channels for translation and mimeographing your opening statements and your documents in ample time that we may not be delayed because of administrative difficulties. You gentlemen are as familiar as the members of the Tribunal are with the administrative problems, and you must positively take account of those matters in ample time to have your material processed so that there will be no occasion for delay with respect to the opening statements or the reception of the evidence of the Defense. I make this statement so that it will be on the record of this proceeding and notice to all concerned.

Has the Prosecution any preliminary announcements for the day?

DR. BOETTCHER: Mr. President, in regard to the results of yesterday's discussion, we were able to find out the attitude of other Defense Counsel last evening as far as they were available. I ask permission that Dr. Gierlichs be permitted to make a statement in English which we consider important.

DR. GIERLICH: May it please the Tribunal, I have been instructed by my colleagues to submit respectfully the following to Your Honors on behalf of the Defense. The Tribunal has informed us during the conversation in chambers between representatives of the Defense and of the Prosecution that they propose to rule on the adjournment of the trial in such a manner that the opening statements of the Defense should be held on 18 and 19 December, 1947, and the case in chief of the Defense then would begin on the 12th of January, 1948. The representatives of the Defense have passed on this information to all Defense Counsel who could be contacted within the short time available and who, after having carefully considered the situation arising from such an adjournment, have unanimously decided, bearing in mind their duty as Defense Counsel and officers of this court in a trial of world-wide importance, to read the following statement with Your Honors' permission into the record. I may mention that this statement had been prepared to be read into the record before a definite ruling of Your Honors had been given, but I shall beg to ask for your permission to read it in the same way as it had been prepared.

Your Honors will remember the statement which the Defense made at the arraignment and which dealt with the disadvantages and difficulties which the Defense has to cope with in this trial, in view of the exceedingly short period for the preparation of their cases. Your Honors will recall that in this statement we already anticipated the vast amount of evidence which the Prosecution would introduce in this trial, and we must confess that these anticipations have been considerably surpassed by the evidence which actually has been put before Your Honors in the course of the Prosecution's case. So far ninety-one document books have been introduced by the Prosecution. The documentary evidence even exceeds the evidence which has been introduced by the Prosecution in the IMF trial and is nearly five times as great as the evidence which has been put in by the Prosecution in the first case against German industrialists, namely, the case versus Flick and others, which now has arrived at its final state.

In addition to this incredible vast amount of documents which has been poured upon the defense within the still more incredible short period of approximately three months, about sixty witnesses have been heard as compared with twelve witnesses which have been heard in the aforementioned case. If Your Honors take into consideration the fact that the presentation of the Prosecution's case in the I.G. Farben trial took a period which exceeds the duration of the Prosecution's case in chief in the trial of Case V against Flick and others only by a couple of days, then, as the Defense respectfully submit, the discrepancy between the difficulties which the Defense have to overcome in preparing their presentation of their own evidence in both cases becomes even more evident.

In view of these facts which I took the liberty to outline before Your Honors, the Defense feel that they are justified in stating most emphatically that they hardly had the time to follow the rapid presentation of the vast evidence presented by the Prosecution in this case, that they hardly had the time to discuss this evidence with their clients, and that, therefore, there was definitely no time at all to prepare their own defense in such a manner

is required in a trial with the scope exceeding all other cases which have so far been tried in Nurnberg.

It may be mentioned, furthermore, in this connection that the period for the preparation of the defense will be even more shortened by the fact that during this period the cross examination of the still outstanding witnesses of the Prosecution has to be carried out before the commissioner of the Court as intimated by Your Honors during yesterday's discussions in chambers. Therefore, a considerable part of this period will be taken up for the defendants and their Counsel by the necessity to prepare and attend these cross examinations, which has not been the case in the trial versus Flick and others.

Considering the fact that the Defense is the Case No. V versus Flick and others have been granted an adjournment of nearly three weeks before the beginning of their own case in chief, the Defense feel that they have to point out with due respect to Your Honors that the adjournment which the Tribunal proposed to rule in this case is definitely inadequate, especially as, according to information which we just have received but which could not yet be ascertained, all activities in this court will be suspended between December 24th and January 4th, and, therefore, for instance, very probably the Defense during these days will have no possibility to discuss their cases with their clients. In any case, the technical preparation of the Defense cases, especially the translation and mimeographing of documents, is hampered to a considerable extent by the before-mentioned holidays.

The Defense, therefore, feel justified to state that the actual period for the preparation of their own case is in view of this fact considerably smaller than it may seem at first sight. Moreover, it seems to us that if the Defense is not permitted to have sufficient time to prepare their cases on the general line which has been brought to the attention of Your Honors, and which aims at a concentrated and systematic presentation of the Defense's evidence which undoubtedly will avoid repetition and thereby shorten considerably the period which is necessary for the presentation of all the individual cases, this advantage will be lost to a considerable extent if the Defense

start their case without a proper preparation.

The Defense felt it to be their duty to draw respectfully Your Honors' attention to the more or less practical facts. However, they feel bound before their consciences as Defense Counsel to stress even more emphatically that this, in our minds, inadequate adjournment, if it really should be ruled, is incompatible with the principles of justice and fair trial which are governing also this case.

In concluding this statement I beg to draw Your Honors' attention to another point which we have carefully considered, to wit: the date which Your Honors intend to fix for the opening statements of the Defense. Your Honors will bear in mind that the Defense in presenting their own case propose to deal at the beginning with several general subjects falling within the scope of this trial and forming a uniform basis for the defense of all, or at least most individual defense cases. In our minds, therefore, it would be impracticable to hear the opening statements for the individual defendants before these general subjects have been dealt with, and we think, therefore, that it will be more convenient also for Your Honors, if the opening statements for the individual defendants are held at the beginning of their cases after these general subjects have been covered. We think also that the opening statements for the individual defendants could be considerably shortened if they would follow the aforementioned general points because only if such an order is observed would Defense Counsel be in the position to avoid repetition.

THE PRESIDENT: The statement of Counsel for the Defense is in the record. The Chair, I am sure, would not be expected to comment upon it without a conference with his associates. If there is any comment, it likewise will be on the record without too much delay.

Does the Prosecution have any announcement?

MR. SPRECHER: May it please the Tribunal, we will go forward first with Document Book 89 and then with Document Books 82 and 83. If we complete those today, we now plan to put on several witnesses, and we plant the first to be Rudolf Diels. We have to make some administrative arrangement with respect to the others, but we will announce them as soon as possible after we see how we get along with the document books.

Mr. President, there are two very short announcements I would like to make concerning corrections in translations. May I make those now?

THE PRESIDENT: Yes.

MR. SPRECHER: They are all that are outstanding so far as I know. With respect to Prosecution Exhibit 350 which you will find in Book 13 at page 33 of the English, there is an errata sheet which has been made at the request of Defense Counsel. I submit copies to the Secretary for Your Honors to insert at that page in your books, and also I give copies to the Defense. With respect to the same document corrections in the German which were questions of transcription have been made, and I also give copies of those to the Secretary and to Defense Counsel. And the last correction is a correction to Prosecution Exhibit 1333 in Book 69 at page 4 of the English. However, since the correction is only in the German copy and contains typographical errors or failures in proper transcription, I will submit copies only to the Secretary and to Defense Counsel. We will then go on with document books.

THE PRESIDENT: Does the Defense have any further announcement to make at this time?

DR. BOETTCHER: No.

THE PRESIDENT: The Prosecution may proceed with its proof.

DR. HOFFMANN: Hoffmann, Counsel for the defendant von der Heyde.

Your Honors, I should be grateful to the Prosecution if when they offer their Book 89 they would indicate for what purpose they offer the book. I believe that would make it easier to object to one or the other document in Book 89.

THE PRESIDENT: It is a proper request. Counsel for the Prosecution may state its theory.

MR. WINSKOFF: If it please the Court, with respect to both Count 3 and Count 4 the documents that are offered in Document Book 89 are relevant to show the general knowledge that existed concerning what happened in the concentration camps run by the SS, and particularly in the concentration camp Auschwitz with which Count 3 deals at length.

If it please the Court, this document book contains documents which show world-wide knowledge of the extermination program taking place in Germany. It shows world-wide knowledge of the gassings of hundreds of thousands of human beings in the concentration camps of Germany. It shows the tremendous efforts that were made in the United States, in England and other Allied Nations through broadcasts, through leaflets, through newspapers to get the information back to Germany so that all Germans would be aware of that program. These books show the knowledge within Germany, the knowledge outside of Germany, the methods, the techniques and the intensive program adopted through all the Allied Nations to contact Germany and the satellite countries so that they would know what was going on in Germany so that nobody could ever claim later on that they didn't know the fast program of extermination that was taking place at Auschwitz. Some of the documents, in fact, refer specifically to gassings and extermination with Cydon B. gas. It bears both directly on the Auschwitz part of Count 3 as well as the poison gas part of Count 3, and, of course, it bears just as directly on the SS part of Count 4.

THE PRESIDENT: Since the Tribunal now has before it Book 89 and the Prosecutions's statement as to the theory upon which the documents therein contained are offered, the President thinks it might be an appropriate time for the conference of the Tribunal.

We shall rise temporarily.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: There is nothing presently before the Tribunal.

Does the Defense counsel have any motion to make with reference to the documents contained in Book 89, Dr. Hoffmann?

DR. HOFFMANN: (Counsel for defendant Von der Heyde): Mr. President, I intentionally asked the Prosecution to state their point of view as to why they present Document Book No. 89. Prosecution stated that they offer the book to prove general knowledge of certain conditions in Germany, which, in the Defense's point of view, were not generally known in Germany. This question of general knowledge is of most fundamental importance for this trial. The Defense must have an opportunity to bring counter-evidence in every form and in the widest scope.

If the Prosecution maintains their assertion further, that by presenting this book they want to prove general knowledge of all defendants and want to establish the guilt of each single defendant, individually, then the Defense will try by all means in their power to bring counter-evidence to this point.

I ask, therefore, that the Tribunal should not admit this Book No. 89 and that it should be proven against each defendant what individual guilt or knowledge he had himself, without the Prosecution being permitted to make this guilt general on a general basis.

THE PRESIDENT: The Tribunal has in mind the statement of the theory of the Prosecution upon which the documents contained in Book 89 are to be offered in evidence. The Tribunal has gone through the book and familiarized itself with the nature of the documentary material contained in it.

It is the view of the Tribunal that the documents contained in this Book 89, in the main, are documents of which this Tribunal would

take judicial knowledge without proof. That is, as to any other documents contained in the book, with respect to which there might be a question as to whether or not the Tribunal would take judicial knowledge as to those documents are purely cumulative in character and unnecessary and unimportant in the consideration of this case. The Tribunal will not deprive counsel for the Prosecution of the right to make the formal offer for the reasons stated.

If counsel for the Prosecution will assign numbers to these documents, the Tribunal will sustain an objection to the introduction of all the documents in Book 89 for the reasons just stated.

MR. MINSKOFF: If it please the Court, may I have a few moments to confer with my colleagues?

With the permission of the Court the Prosecution would like to mark for identification the documents contained in Book 89 and ask leave of the Court, between now and the close of the Prosecution's case, to file, if it sees fit, with respect to certain of the documents, a memorandum.

THE PRESIDENT: Very well.

MR. MINSKOFF: Thank you, sir.

THE PRESIDENT: Perhaps I might amplify what was said and give all of counsel a little more definite statement of our position.

It is our view, gentlemen, that as to matters of which this Tribunal takes judicial notice, it is not proper to burden the transcript of evidence in the case. The very first document illustrates the point.

Counsel for the Prosecution and the Defense, even in the closing argument, would be within right to call our attention to the judgment of the I.M.T. case, and this Tribunal would consider it also true of the judgments of the other tribunals. But in the form this is presented, it is presented in a way as to raise a question of fact with regard to these things which are conclusive and which speak for themselves. This Tribunal does not wish to extend this trial by having matters of that character

in the evidence of the case. I say that in addition to what was said with reference to the cumulative effect of some of the other documents in the record.

MR. SPRECHER: Mr. President, the point is, of course, very well taken in the view of the Prosecution, so I don't want to rise to talk about that. I just want to state what our purpose had been.

In some cases the fact that there weren't enough copies of the materials of which we were asking Your Honors to take judicial notice has raised some objection. And, therefore, our purpose was not to bring this material before Your Honors as factual, documentary evidence in the same sense as we bring German captured documents or affidavits, but it was merely to give a convenient means of reference to these materials.

In this respect, may I have just a moment? I want to talk to Mr. Minskoff with respect to those copies, excerpts from the I.M.T. decision which are presently in the document book.

MR. MINSKOFF: If it please the Court, with respect to those documents of which the court will take judicial notice, it was only intended that we would ask the Court to do that and point to the documents in the book. In the view Your Honors have suggested, the Prosecution will make no reference to those documents of which it asks the Court to take judicial notice, and only mark them for identification.

THE PRESIDENT: These in your book, we should like to have the record show your disposition of them, since they are in the book. By that do you mean to say that you are going to withdraw -- or perhaps, if you wish, you may go through and give them all numbers. We have no objection.

MR. MINSKOFF: I think it would be clear if they all had numbers. I think the only purpose --

THE PRESIDENT: Why don't you give them all numbers and let us rule on them all?

MR. MINSKOFF: We shall just mark them for identification at this time.

DR. HOFFMANN: Your Honors, I understood the decision of the Tribunal to mean that the documents should be submitted for identification, but this does not obviate the necessity that I should later have to object to all of these documents, just as I objected to the entire document book. I should like to be enlightened by the Tribunal.

THE PRESIDENT: This is purely a matter of making the record reflect that action of the Tribunal and counsel. If counsel for the Prosecution will assign a number to the documents contained in Book 89 — which it may now do — the Tribunal then will sustain an objection to the introduction of each and every one of the documents contained in the book, and the record will be closed as to this book.

DR. HOFFMANN: Do I have to object to each document singly, or is it enough —

THE PRESIDENT: You have made your objection and your objection has been sustained as to the competency and materiality of each and every document contained in the book. We are simply straightening out the record now.

MR. SPEECHER: Mr. President, your last remark troubled us a little bit. We had understood that your ruling was not on the competency and materiality necessarily, but rather on the question of whether or not the documents may have been cumulative or whether or not they were documents of which you would normally take judicial notice, and, therefore, they should not really have been presented to you in this manner.

THE PRESIDENT: Perhaps that was an unfortunate use of terms. What we do mean to say — and I think, gentlemen, this will be clear enough — is: we shall now permit the Prosecution to mark the documents

contained in the book. There has been an objection made with respect to the admission in evidence of each of those documents. That objection is now sustained by the Tribunal upon the ground that the documents are either matters of which the Tribunal would take judicial notice or are cumulative in character.

Is that clear now?

Make your record.

MR. Minskoff: The first document in Document Book 89 is VI 12268 which will be Prosecution's Exhibit 1744, I believe, for identification. Document NI 12421 is Prosecution's Exhibit, for identification, 1745.

NI 12347 as 1746, for identification.

1723PS as Exhibit 1747, for identification.

NI 12270 as Prosecution Exhibit 1748, for identification.

1615PS as 1749, for identification.

501PS as 1750, for identification.

NI 12350 as Exhibit 1751, for identification.

NI 12346 as 1752, for identification.

NI 12348 as Prosecution's Exhibit 1753, for identification.

196PS as 1754, for identification.

NI 12333 as 1755, for identification.

NI 12321 as 1756, for identification.

NI 12369 as Prosecution's Exhibit 1757, for identification.

NI 12545 as 1758, for identification.

122 as 1759, for identification.

That covers the Document Book 89.

THE PRESIDENT: Now the record may show the documents numbered from 1744 to 1759, inclusive, marked for identification by the prosecution and offered in evidence. The record may further show that the objection to the introduction of these documents is sustained by the Tribunal for reasons heretofore stated.

MR. MINSKOFF: The next book, Your Honors, will be Book 82. With respect to the first document in Document Book 82, NI 12207, the prosecution asks the Tribunal to take judicial notice of this document and mark it as Prosecution's Exhibit 1760, in evidence.

DR. HERMELT: I object to the presentation of this document, NI 12207. First of all, this document is an uncertified excerpt. Merely the translation of the document is certified to, as can be seen from the last page of the document. The excerpt itself is not certified. At least the

book should be submitted here. Besides that, this is inadmissible evidence if, in this trial against Farben, the same fact should be partly relevant as was relevant in the trial against Tesch. If, in this trial against Farben, the same facts should be of relevancy as were relevant in the trial against Tesch before a British Military Tribunal in Hamburg, then the prosecution should prove, by witnesses, and by documents, that that is so, but they cannot be permitted to have an easy time of it and merely refer to the findings of another Tribunal. That is especially not possible if it is the Tribunal of another state whose findings are according to other principles of law. Apart from that, these defendants here were not represented in that trial and therefore they couldn't make any statements in the British trial and not cross examine the witness there. Furthermore I point out that, according to the first sheet of this document, we are here concerned not with a complete reproduction of the Hamburg trial, but merely with a selection and a compilation of a commission of the United Nations War Crimes Commission. According to the principle that the best evidence should be submitted, this document, NI 12307, is therefore not admissible as evidence to any facts.

In closing, I want to mention that in this document there is no mention made of any one of the defendants, or Farben, or of Degesch. They are not mentioned with a single word.

THE PRESIDENT: What does the prosecution have to say with reference to the theory upon which this document is offered? I'm sorry, are you offering it in evidence or are just asking us to take judicial notice of it?

MR. WINSKOFF: With respect to the first document, we're only asking the Court to take judicial notice of it.

THE PRESIDENT: Then it will be marked only for identification and not introduced in evidence.

MR. WINSKOFF: I had said "in evidence", but the record can be changed to say "identification".

THE PRESIDENT: Very well.

MR. MINSKOFF: The next document NI 034 in the book is not offered in evidence and is withdrawn from the book. It is the affidavit of a deceased affiant.

The same is true of the following, NO 2368, the affidavit of Entress.

DR. HEINTZLER (Defense Counsel for defendant Warster): Your Honors, may I be permitted to ask something in regard to the first document in this book, Exhibit 1760? It seems to be of importance to me to clarify what the Tribunal should take judicial notice of, conforming to the request of the Prosecution. Should the Tribunal take judicial notice of the fact that in Hamburg a trial was instituted against Tesch and that it ended with a certain finding? If that is so, then the defense has no objection. However if it is the Prosecution's contention that the Tribunal should take judicial notice of the individual findings of the Hamburg Tribunal, then the defense would have to raise an objection against that.

I ask the Tribunal to request the prosecution to make their statement as to that.

THE PRESIDENT: There is no occasion for the Tribunal to discuss what subject it will or will not notice as a matter of judicial notice. That raises purely a question of law, and not one of fact. If the consideration of this document is urged upon us in the determination of this case, it will be proper time then to discuss whether or not it is a subject of which we will take judicial notice. The prosecution is not offering the document in evidence. The question of judicial notice is not presently before the Tribunal. Documents of some character are so generally known to be the subject of judicial notice that we speak of them freely. In the case of a document of another character, there might be some question raised about it. We should not want to take the time of the Tribunal now to go into a discussion of the field of material of which we might take judicial notice. If the prosecution subsequently takes the position that this is a document of which we should take judicial notice, counsel for the defense will have a full opportunity of stating their views as to whether or not that position is well taken.

MR. MINSKOFF: One moment, your Honor, please.

If it please the Court, less there be any subsequent confusion as to the purpose for which the document was offered, the prosecution calls attention to Article IX of Ordinance 7 where it is stated:

"The Tribunals shall not require proof of facts of common knowledge, but shall take judicial notice thereof. They shall also take judicial notice of official governmental documents and reports of any of the United Nations, including the acts and documents of the committees set up in the various Allied countries for the investigation of war crimes, and the records and findings of military or other tribunals of any of the United Nations."

With respect to the document marked for identification, the prosecution asks the Court to take judicial notice of the findings of that case.

THE PRESIDENT: Very well. Take up your next matter.

DR. HEINTZLER: Your Honors, I merely want to emphasize once more what I mentioned previously. This is not the record of the proceedings against Tesch in Hamburg, but only the excerpt of such record. I believe, if the prosecution wants the Tribunal to take judicial notice of these proceedings and these findings, then it would be necessary to furnish the Tribunal a complete record of the proceedings there. The defense is not in a position to decide, on the basis of an excerpt, whether the matters stated in it are correct.

THE PRESIDENT: There is nothing whatever before the Tribunal. The question of whether, in the final consideration of this case, we take judicial notice of a document is a question of law, not of fact. If it is a document of which we should take judicial notice, we shall consider the document. In case of doubt, or in case of the document not being a complete document, it raises purely a question of law, to be considered at that time. There is nothing now before the Tribunal. The prosecution has indicated that this Judgment or proceeding is one of which it will expect the Tribunal to take judicial notice. It is not offering, as it

cannot offer, this document in evidence. It is not a part of the evidence. When we come to the argument, gentlemen, if there is any controversy between you as to what we shall take judicial notice of you will have full opportunity to present your views and we will then determine what to take judicial notice of.

Perhaps it may save a bit of time if we give the prosecution a moment now to get its proof a little better organized.

We'll rise for our recess at this time.

(A recess was taken.)

DR. BEHNDE: Your Honor, during the first part of the session various documents were rejected and the reason was given they were not relevant. The Tribunal, however, stated that it would take judicial knowledge of such documents. Personally I am not clear about the difference and during the recess I tried to clarify this matter by conferring with my colleagues. None of us, however, is clear about the difference and we should be very grateful to Your Honor, if you would be kind enough to explain to what the difference is between a document being admitted as having probative value and a document declared not to have probative value but admitted for judicial notice.

THE PRESIDENT: It's the view of the Tribunal that no proof, as such, is necessary to those matters of which the Tribunal takes judicial knowledge and that it is burdening the record to impose matters of that kind on the record of the Tribunal. Now, as to what matters this Tribunal is authorized to notice judicially it is only necessary for us to call your attention to Art. 9 of Ordinance 7 with which you gentlemen are familiar. It simply provides: "The Tribunals shall not require proof of facts of common knowledge but shall take judicial notice thereof. They shall also take judicial notice of official governmental documents and reports of any of the United Nations, including the acts and documents of the Committees set up in the various Allied countries for the investigation of War Crimes and the records and findings of Military or other Tribunals of any of the United Nations." That, gentlemen, seems to be a sufficient answer to the question propounded by counsel and, as the Tribunal has indicated, it is our view that when documents of which the Tribunal would take judicial knowledge or should take judicial knowledge, by virtue of these provisions of Ordinance 7, it is improper and an unnecessary encumbrance of the record to introduce such material into evidence; evidence being the method by which counsel produces a showing of fact which may be the subject of controversy. Does that answer your question, doctor?

DR. BERNDT: Yes.

THE PRESIDENT: You may proceed.

MR. MINSKOFF: The ~~same~~ document, if it please the Court, is 9D-11957 and that's offered as Prosecution Exhibit 1761 in evidence. The English had "NO". It should be "NI". The German is correct.

DR. BERNDT: Dr. Berndt. I must object to the submission of this document. The statement of Dr. Diels does not contain a single fact which is relevant in this case. They are only opinions repeated in this document — only assumptions and personal opinions and utterances derived from hearsay. Only a very flighty survey of this document confirms this. For instance, under paragraph 5, it says and I quote: "It was a well-known fact," but the witness himself cannot state anything from his own knowledge. Paragraph 6: "It was generally known." Then Paragraph 7: "In my opinion this is and that was done." Paragraph 8: "It was generally known." Paragraph 9: "It was generally said", etc., etc. There's no fact in this affidavit which is of any value for the purpose of this trial. I will also not fail to mention that in the statement of the Prosecution and in the judgment of the English Tribunal at Hamburg, the statement of Diels was not mentioned because these statements of Diels contain no facts. I think that arising from this circumstance I have a confirmation of my opinion that this document must be considered to be irrelevant.

MR. MINSKOFF: May we say a few words?

THE PRESIDENT: Yes, but we are particularly interested in what you have to say upon this proposition as to whether or not this affidavit contains anything other or different than what purports to be a matter of common knowledge, of which the Tribunal is bound to take judicial notice and secondly, whether or not it contains any recital of fact as distinguished from an expression of opinion and conclusion of the witness. Let me hear you.

MR. MINSKOFF: Let me ask you a question first, your Honor? There are two ways in which we could prepare these affidavits. We could prepare

them by having the ultimate fact stated and all of the bases for that included in the affidavit and all of the illustrations and experiences of the witness. That has not been the practice so far. We have tried to put in the affidavit statements of ultimate fact and partly conclusions of facts, it always being understood that such witnesses were available for cross examination, at which time the defense could test the bases for those facts — those statements of ultimate facts.

THE PRESIDENT: Just in that connection, may I ask you, in the interest of saving time, is this affiant speaking of conditions as existed at any place that was connected with the Farben enterprise or with which any of these defendants had any connections or is he speaking of conditions that existed at other places?

MR. MINSKOFF: He is speaking of conditions as they existed in Germany where all of the defendants were. He mentioned specifically the use of Zyklon-B and the knowledge of the use of that product in the extermination of human beings.

THE PRESIDENT: Go ahead with your statement.

MR. MINSKOFF: As to the other questions propounded by the Tribunal, it is admittedly in large parts matter of common knowledge. There are several ways in which we can establish common knowledge. We can ask the Tribunal to take judicial notice that certain findings of other Tribunals or other bodies which are properly the subject of judicial notice. Other methods of arriving at the same results is to produce witnesses who can testify as to the common knowledge in Germany on a given subject before the Court.

THE PRESIDENT: Gentlemen, we have said before that in the interest of time we could not undertake to edit these affidavits and to strike out from the record the parts which appear to be clearly incompetent. We said that counsel would necessarily have to depend upon the fact that the Tribunal could distinguish between matters of opinion as such and matters that had some probative value. It occurs to the Tribunal that even if it is a matter of common knowledge, by which this Tribunal is bound, the use of gas as it is described in this affidavit in paragraphs 5 and 6, there may be some matters that are not altogether the subject of common knowledge - and that is the use of a particular gas. The Tribunal is of the opinion that there may be some such showing of fact here as to warrant the introduction of this affidavit in evidence with respect to that narrow field. We assume that it is the intention of the prosecution to produce this witness for cross examination if the affidavit is admitted in evidence. Frankly, we think the field is very narrow as to any evidentiary fact contained in this affidavit, but we are hardly in a position to say that it's totally devoid of probative value, even if we take the view that it is largely devoted to matters of common knowledge of which we take judicial notice. It may be that the prosecution has in mind connecting the defendants or some of them with this particular gas that's named here. We cannot anticipate what the prosecution may have in mind. Therefore, the objection to the introduction of this document will be overruled, but we may say that if the document is to be made the subject of cross examination, the Tribunal would feel obligated to confine the cross examination to a very very narrow field.

MR. MINSKOFF: For the purpose of cross examination of the limited field we have indicated the witness will be available this afternoon to testify.

THE PRESIDENT: Very well. Offer your next document.

MR. MINSKOFF: The prosecution now offers NI 11954 as Prosecution's Exhibit 1762, without comment.

The prosecution offers also, without comment, NI 11710 as Prosecution's Exhibit 1763.

And NI 11862 as Prosecution's Exhibit 1764.

The next.....

DR. BERNSTEIN (Interrupting): Against the submission of the Document NI 11954 I have also to raise an objection. According to the first page of the document, it appears that it is an excerpt from a translation of the records of the British Military Tribunal against Tesch and others. In other words, it is a record about the interrogation of the witness Brod before the Military Tribunal in Hamburg. This record cannot substitute a hearing of this witness before this Tribunal. The Tribunal does not admit affidavits originating from deceased witnesses because they can no longer be heard. In my opinion, a record of a witness' testimony before another Tribunal can neither be admitted, for the same reason.

THE PRESIDENT: Just a moment, counsel, please. May we interrupt you to inquire of the Prosecutor, is this document, marked 1762, offered as an interrogation of this witness?

MR. MINSKOFF: This document, if it please Your Honor, is the transcript of the testimony that this witness gave before the - during the trial of the Tesch Case referred to previously.

THE PRESIDENT: Is it your purpose to produce this witness for cross examination?

MR. MINSKOFF: If he is asked for cross examination, he is available, Your Honor.

THE PRESIDENT: Then the objection will be overruled. The Tribunal is not concerned with what the purpose may have been when the affidavit or interrogation was obtained. It is immaterial to us as to whether or not the testimony or the affidavit of this witness that is offered here was obtained especially for this case or in the course of the trial of some other case. It would be quite immaterial as to those circumstances if the witness is produced here and counsel

for the defense has proper opportunity to cross examine him, and on the representation of the prosecution that this witness will be produced for cross examination, if requested, the objection is overruled.

MR. MINSKOFF: The next document, if it please the Court, is 3858PS which again is the affidavit of a deceased affiant and is withdrawn from the book. The prosecution now passes to NI 6363 which it offers in evidence as its Exhibit 1765, and NI 12073 which the prosecution offers as its Exhibit 1766. The prosecution offers NI 12203 as Prosecution's Exhibit 1767, and NI 9098 as Prosecution's Exhibit 1768. The prosecution also offers at this time NI 12217 as Prosecution's Exhibit 1769. The prosecution offers NI 11393.....

THE PRESIDENT: Just a moment, Mr. Prosecutor.

DR. BLANDT: I beg your pardon, Your Honor. I couldn't quite get the translation. I have to object against the submission of Document NI 6361 and the following documents thereafter. I object because the document is irrelevant. The same assertion refers to all the following documents in Volume 82 and to all documents which are collected in Volume 83.

THE PRESIDENT: Counsel, you are a bit premature. I do not believe we have quite reached the document of which you are speaking. Did I understand you correctly that you are directing your remarks at Document NI 6361 and those which follow?

DR. BLANDT: Yes.

MR. MINSKOFF: 6363, Your Honor. It's in evidence.

THE PRESIDENT: 6363. I misunderstood you. Go ahead.

DR. BLANDT: My number is 6363.

THE PRESIDENT: Now we understand you.

Very well. Now you may make your statement.

DR. BLANDT: All these documents which are contained in Book 82, following NI 6363, and all of the documents which are collected in Book 83, refer to one complex. They refer to the delivery of Zyklon B to the concentration camp of Auschwitz. I must request the Tribunal

to look at page 5 of the index of Book 82 which coincides with the index of Book 83. There you find the heading which you find in paragraph 31 of the Indictment, and I quote:

"Poison gasses manufactured by Farben and supplied by Farben to SS officials to be used in the extermination of enslaved persons in concentration camps throughout Europe."

With respect to all documents to which I object, not a single one refers to the assertion contained in this portion of the Indictment. The documents, as I have already stated, refer only to one product, Zyklon B. According to the content of the documents which have been submitted, this poison was not produced by I. G. Farben. Would you please look at the affidavit of Zaun... Alfred Zaun, Book 83, page 3 in the English and in the German. It says there very clearly that Zyklon was produced by the Dessauer Werke, for Sugar and Chemical Industry AG at Dessau, and also by the Keli Werke Kolin AG at Kolin. In other words, the Dessau Werke and the Kolin Werke were the producers of Zyklon B. In no document contained in these books is it being asserted that these two firms, Dessau and Kolin, belonged to the I.G. Farben concern. Neither is it asserted that the I. G. exercised any influence at all, from a personnel or investment point of view on these two plants. That refers to the production of Zyklon B. But even the delivery of Zyklon B to the concentration camp of Auschwitz, according to the content of the documents, was not handled by the I. G. According to the documents, Zyklon B was delivered by the firm Tesch and Stabenow at Hamburg, the so-called Teste. Not a single one of the documents submitted states that this firm Testa belonged to the I. G. Farben or that the I. G. had any influence on them.

I should like to point out to you Document NI 12073 in Volume 83, English page 85, German page 93. I draw your attention to paragraph 3 of this document. I further draw your attention to the Document 7958 in Book 82, English page 42, page 7 of the original.

In both of these documents no mention is made that the I.G. had any capital shares in Testa. It has neither been established that the I.G. had any influence from the point of view of personnel on Testa. The so-called Degesch firm is supposed to have influenced Testa, which is a German company for the combatting of vermin. This company, up to this point, has been mentioned in no chart, in no list, as a subsidiary company of I.G. Farben. Not even has it been designated as a company over which the I.G. had any influence whatsoever. From Document Book 82, English page 85, it appears that the I.G. had a capital investment in this firm of 42.5%. I don't have to state here that this was not an important influence. In other words, by virtue of its capital, I.G. had no decisive influence over Degesch. Degesch had an administrative council composed of seven persons. Only three of these were members of I.G. These too had no decisive influence over Degesch. Degesch cannot be designated as a company over which I.G. Farben had an influence.

All of the submitted documents show that two firms - the firm at Dessau and the firm at Kolin - produced Zyklon B. The documents furthermore show that a firm Testa at Hamburg distributed this Zyklon gas to the concentration camp of Auschwitz. The assertion of the prosecution that I.G. Farben produced and distributed Zyklon B is not being proven by the documents. Consequently, all the documents are irrelevant as to the assertion of the Indictment and, therewith, for the purpose of this Tribunal.

THE PRESIDENT: Mr. Prosecutor, the objections of counsel for the defense are sufficient to impose upon you the burden of pointing out the relevancy of this evidence.

MR. MINSKOFF: If it please the Court, this is a preliminary remark. I can point out that it isn't Farben that is on trial, but the defendants, acting through the instrumentality of Farben and otherwise, that are on trial.

With respect to the Dessauer Works, it will become clear as we go through the documents, that they had no control; they were not the producers; they were merely contractors to whom all the materials were supplied, including the Farben stabilizer from Uedingen. The patent rights, the production rights, the sales rights - none of those were with Dessauer or with the other production company in Czechoslovakia.

The documents in the Books 82 and 83, which were objected to, concern the question of responsibility for supplying a gas, known as Zyklon B, to concentration camps in Europe, including the Auschwitz Concentration Camp, which gas was used to exterminate several million human beings. The evidence in the documents contained in the two books referred to shows:

(1) That Degesch is a partnership with limited liability. The three partners were Degussa with a 42.5% interest, I.G. Farben with a 42.5% interest, and Goldschmidt with a 15% interest. In order to facilitate the exercise of the partnership rights in the management of Degesch, the partners have established an administrative committee or supervisory board called the Verwaltungsausschuss. This administrative committee or supervisory board is the joint representative of the partners in the exercise of their partnership rights and its decisions are binding upon the managers and the partners.

The portions I just stated are directly from the contract between Farben, Degussa and Goldschmidt in forming

Degesch.

This administrative committee or supervisory board was made up as follows: Out of 11 members, five, including the chairman, were from the Vorstand of I.G. Farben. These were Mann, Boerlein, Wurster, Brueggemann and Weber-Andreas. Four members were from Degussa. One from Goldschmidt, and one from a subsidiary of Degesch, named Heardt.

Apart from the 42.5% interest, and apart from having five Vorstand members on the administrative committee or supervisory board, the closeness of the ties between I.G. Farben and Degesch may be illustrated by the fact that out of eight products sold by Degesch, seven were Farben products. Thus, T-gas, Ventox, N-1, Cartox, Calcid, all came from I.G. Farben Ludwigshafen; Tritox came from I.G. Farben-Hochst; and Areginal from I.G. Farben-Wolfen. Even the eighth product, Zyklon B, which is a Degesch product, is made with a stabilizer procured from I.G. Farben-Urdingen.

Monthly reports of Degesch, showing the turnover figures, for Zyklon B gas, as well as quarterly and annual reports, were supplied to Farben. The annual reports showed among other things, a report on the chief customers and changes which had taken place among customers during the current year. As a result of these reports and discussions at meetings of the administrative committee, those receiving the reports and attending the meetings must have known about the shipments of Zyklon B gas and gas chambers to the concentration camps and the SS which were made by Degesch.

The evidence submitted so far establishes beyond a reasonable doubt that the defendants knew that human beings were being gassed at Auschwitz and other concentration camps. Knowing this and being on notice that Zyklon B gas was

Degesch.

This administrative committee or supervisory board was made up as follows: Out of 11 members, five, including the chairman, were from the Vorstand of I.G. Farben. These were Mann, Hoerlein, Wurster, Brueggemann and Weber-Andres. Four members were from Degussa. One from Goldschmidt, and one from a subsidiary of Degesch, named Heardt.

Apart from the 42.5% interest, and apart from having five Vorstand members on the administrative committee or supervisory board, the closeness of the ties between I.G. Farben and Degesch may be illustrated by the fact that out of eight products sold by Degesch, seven were Farben products. Thus, T-gas, Vontox, N-1, Cartox, Calcid, all came from I.G. Farben Ludwigshafen; Tritox came from I.G. Farben-Hoechst; and Aroclinal from I.G. Farben-Wolfen. Even the eighth product, Zyklon B, which is a Degesch product, is made with a stabilizer procured from I.G. Farben-Uerdingen.

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The evidence submitted so far establishes beyond a reasonable doubt that the defendants knew that human beings were being gassed at Auschwitz and other concentration camps. Knowing this and being on notice that Zyklon B gas was

supplied to concentration camps and the SS by Degesch, the least that can be said is that these defendants were under a duty to investigate, and, even though some of the defendants may claim they did not know that the gas supplied by Degesch was actually used to exterminate people, in the words of Military Tribunal I, they could have found out had they made the slightest investigation. The evidence indicates, moreover, that some of the defendants were not only under a duty to investigate but, in fact, must have known all the facts. I.G. Farben had over 600,000,000 marks invested only a few miles from the place where they gassed as many as 25,000 human beings a day.

The defendant Duerrfeld lived in Auschwitz and, during the years 1942 to 1944 I.G. Auschwitz was visited by Krauch, Ter Meer, Schneider, and frequently by the responsible Vorstand members, Ambros and Baatofisch.

Ambros states that he visited Auschwitz approximately four times in 1941, four times in 1942, five times in 1943 and five times in 1944.

Schneider states that he was in Auschwitz twice and admits that he had heard about the gassings in 1943 and 1944.

The defendant von Schnitzler stated that he was told by Muller-Gunradi about the gassings. In an interrogation, which reads as follows, he made the following answers to questions:

"Q. Didn't you question some employees of yours further in regard to the use of this gas?

"A. They said they know it was being used for this purpose.

"Q. What did you do when it was told you that I.G. chemicals were being used to kill, to murder people held in concentration camps?

"A. I was horrified.

"Q. Did you do anything about it?

"A. I kept it for me because it was too terrible. I was always under the impression that these gasses were not manufactured by us. I asked Muller-Cunradi 'Is it known to you and Ambros and the other directors in Auschwitz that the gasses and chemicals are being used to murder people'?

"Q. What did he say?

"A. 'Yes, it is known to all I.G. directors at Auschwitz.'

The defendant Lautenschlager states:

"In discussions in Hoechst in about 1943 or 1944 I learned from my colleagues who had visited Ludwigshafen and had met employees of the I.G. Auschwitz there that people were being gassed in the Auschwitz concentration camp. I think I also had some conversation on the gassing of people in Auschwitz with the Vorstand member Friedrich Jachno, chief engineer of the Hoechst I.G. works, whose son was employed as an engineer at I.G. Auschwitz."

On the question of the defendant's responsibility, the court is also asked to consider the following:

Under German law, it is the duty of the supervisory board or administrative committee to supervise lawfulness of the acts of the management,

Also, with respect to the case of Bruno Tesch, et al, concerning which there were a number of comments this morning, the question before the Court was very similar to that before this Tribunal. That court too had to decide whether human beings were in fact exterminated at Auschwitz and whether the means of extermination was Zyklon B gas. It too had to decide whether the supplier of the Zyklon B gas, a mere middleman for Degesch, had knowledge that the

gas was being used for the murder of innocent people. On the substantive question involved, the court held:

"The decision of the Military Court in the present case is a clear example of the application of the rule that the provisions of the laws and customs of war are addressed not only to combatants and to members of state and other public authorities, but to anybody who is in a position to assist in their violation.

"The activities with which the accused in the present case were charged were commercial activities conducted by civilians. The Military Court acted on the principle that any civilian who is an accessory to a violation of the laws and customs of war is himself also liable as a war criminal."

With respect to the question of knowledge, the evidence is that case against the defendant, Weinbacher, the procurist of the firm, not the owner, is quite pertinent. The report states, and I quote:

"In Weinbacher's case there was no direct evidence either by way of conversation or of anything that he had written among the documents of the firm produced during the trial which formed any kind of evidence specifically imputing knowledge to Weinbacher as to how Cyclon B gas was being used at Auschwitz. 'But the Prosecution', said the Judge Advocate, 'ask you to say that, in his case as in Tesch's case, the real strength of their case is not in the individual direct knowledge, but the general atmosphere and conditions of the firm itself.'"

In the above case defendant Weinbacher, as well as Tesch, was found guilty and sentenced to be hanged. The conviction was later affirmed and the sentence carried out.

The case is particularly relevant to the issues before this Tribunal for the following reasons:

(1) Every can of Cyclon B which the Tesch firm supplied to Auschwitz or any other concentration camp or, for that matter, any other customer, came from DEGESCH which admittedly is the sole producer and sole distributor of Cyclon B in all Europe:

(2) Under the procedure for supplying gas to customers, DEGESCH exercised complete control over every delivery of Cyclon B gas and was informed as to the ultimate consumer and the quantity in every case;

(3) DEGESCH supplied Auschwitz with large quantities of Cyclon B gas in violation of its contract with the Tesch firm and in violation of the German decree requiring deliveries to the central organization of the SS rather than individual concentration camps. Moreover, DEGESCH, knowing it was prohibited to sell pure prussic acid nevertheless sent quantities of Cyclon B without the warning agent, i.e., pure prussic acid, to the Auschwitz concentration camp. The only possible justification for the sale of the gas without the warning agent is the foreknowledge of its intended use for the extermination of human beings.

The documents relating to the ownership and control of DEGESCH by I.G. Farben, documents showing exclusive control of the product Cyclon B by DEGESCH, documents showing a tremendous increase in the sales of Cyclon B within Germany during 1942, 1943 and 1944, documents showing Farben received 200% annual return on its investment in DEGESCH during 1942 and 1943, documents showing the disproportionate and almost fantastic deliveries of Cyclon B to the Auschwitz concentration camp, and even the supplying of gas chambers for the concentration camp, are all relevant, competent and material evidence with respect to the guilt of the defendants who were members of the Vorstand of I.G. Farben during the period involved.

It would hardly seem necessary to add that the documents in Books 82 and 83 are a fortiori relevant with respect to the defendant Mann, chairman of the supervisory board of DEGESCH and the defendants Hoerlein and Wurster, members of the supervisory board throughout the entire period involved. It may be noted that on the question of responsibility, Military Tribunal I, referring to Karl Brandt's connection with medical experiments, stated, and I quote:

"Had he made the slightest investigation, he could have ascertained that such experiments were being conducted on non-German nationals without their consent and in flagrant disregard of their personal rights. Occupying the position he did, the duty rested upon him to make some adequate investigation concerning the medical experiments which he knew had been, were being and doubtless would continue to be conducted in the concentration camps."

The Court goes further and states:

"If this be true, his failure to follow up the program for which he was charged with special responsibility constituted the gravest breach of duty. A discharge of that duty would have easily revealed what now is so manifestly evident from the record: That whatever may have been the original aim of the program, its purposes were prostituted by men for whom Brandt was responsible and great numbers of non-German nationals

were exterminated under its authority. The evidence is conclusive that persons were included in the program who were non-German nationals. The dereliction of the defendant Brandt contributed to their extermination. That is enough to require this Tribunal to find that he is criminally responsible in the program."

Also Military Tribunal IV stated, and I quote:

"Laurentz's assertion that he did not know what was happening in the labor camps and enterprises under his jurisdiction does not exonerate him. It was his duty to know. The Tribunal finds Laurentz guilty under Counts 2 and 3 of the Indictment."

The Tribunal in the trial of the major war criminals, referring to the defense of Fun, that he did not know that gold from eyeglasses and gold teeth and fillings from the victims who had been exterminated were stored in the Reichsbank vaults stated and I quote:

"The Tribunal is of the opinion that he either knew what was being received or was deliberately closing his eyes to what was being done."

That is the Prosecution's position.

DR. HERKOT: Your Honor, May I make a request. Since we are now shortly before the recess and since the statement on behalf of the Prosecution contains four typewritten pages may I perhaps ask that I should be given the statement in order to look it through during the recess and postpone my answer until after the recess, whereafter the Tribunal will make its ending?

THE PRESIDENT: Counsel, the object that the Tribunal has in permitting you or any other Counsel to address us with respect to objections of this character is to enlighten us as to what our ruling should be; and without assuming to deny you a privilege which you may regard as important, when the Tribunal finds itself sufficiently advised as to be sure of its position, there really is no question that needs further discussion. This Tribunal is not presently concerned with the weight to be attached to this evidence if it is in fact admissible, and we express no opinion as to what part it

may have in the determination of this cause. It is sufficient for our immediate purpose if the evidence offered has probative value as tending to establish the guilt of any defendant in the box. Now that may be upon one of two theories, either as to his personal participation in some activity that is pertinent to the inquiry, or his affiliation with the Farber enterprise, providing also that is established or there is some evidence to establish it on his part in the enterprise.

We think if Counsel will look at Document HI-12073 which we find on page 85 of our Document Book at the bottom of the page, you will find a sufficient answer to the admissibility of this evidence. We shall not state in the record what it is, but it does purport to connect some of the defendants with the facts sought to be established by these exhibits now being offered. Beyond that we express no opinion as to the weight of the evidence, but the Tribunal feels that the objection should be overruled. We make that ruling at this time not for the purpose of depriving Counsel for the Defense the privilege of making a further statement but because we now feel sufficiently advised to assume that responsibility; and it is now almost the hour of recess for the noon lunch, and we thought it only fair to you to let you have our views in advance so that your time and ours shall not be consumed by any further unnecessary discussion in the session this afternoon.

The Tribunal will now rise until one-thirty.

(The Tribunal recessed until 1330 hours.)

AFTERNOON SESSION

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Prosecution may proceed.

MR. MINSKOFF: With the permission of the Court, the Prosecution would like to offer in evidence the balance of the documents in Books No. 82 and 83. In view of the fact that the Prosecution has at length made its position clear on these documents, it will not be necessary to take the Court's time with any further analysis of the documents, and we will just proceed with marking them in evidence.

THE PRESIDENT: Very well.

MR. MINSKOFF: The Prosecution now offers NI-11393 as Prosecution Exhibit 1770 in evidence.

The Prosecution offers NI-6361 as its Exhibit 1771 and NI-12004 as 1772. NI-9093 is offered as its Exhibit 1773.

If it please the Court, before we switch books, certain documents have been circulated; we would like to add those to Book No. 82, and that is, NI-12659 is offered as Prosecution's Exhibit 1774 and 12660 as Prosecution's Exhibit 1775, NI-12661 as Prosecution's Exhibit 1776, NI-12664 as Prosecution's Exhibit 1777, and NI-12665 as Prosecution's Exhibit 1778. That concludes Book No. 82.

THE PRESIDENT: Have those documents been distributed to us?

MR. MINSKOFF: I believe they have, Your Honor. The first document in Document Book No. 83 is NI-11057, which the Prosecution now offers as its Exhibit 1779. We offer also Document NI-11937 as Prosecution's Exhibit 1780. The Prosecution offers NI-9910 as its Exhibit 1781, NI-11881 as its Exhibit 1782, NI-11880 as Exhibit 1783, NI-11396 as Prosecution's Exhibit 1784, NI-7958 is offered as Exhibit 1785, NI-7963 is offered as Prosecution's Exhibit 1786, NI-11092 is offered as Prosecution's Exhibit 1787, NI-11093 as Exhibit 1788, NI-7278 as Prosecution's Exhibit 1789, and NI-9908 as Prosecution's Exhibit 1790. PS-1553 is offered as Prosecution's Exhibit 1791. In this connection....

DR. SEIDL: Dr. Seidl, Counsel for the defendant Dr. Duerrfeld. Your Honor, I object to the admission of the document PS-1553. This is the interrogation of Kurt Gerstein. I substantiate this objection as follows: This is not an affidavit of Kurt Gerstein, but an unsworn statement. This is one reason. The second reason is the following: This Kurt Gerstein cannot be located. In Case No. IV the Defense has already submitted a statement or a certificate of the Secretary General according to which Kurt Gerstein disappeared without trace two years ago. Under these circumstances, it is my opinion that this witness is to be treated as if he were already deceased and that for that reason this statement cannot be admitted. I substantiate my objection with the two reasons, 1, that it is not a sworn statement, and 2, that this witness can not be located.

THE PRESIDENT: Just a moment please. Now as to the statement not being a sworn statement, it is not very material, because ordinarily the witness would be produced and might verify under oath before the Court the statement with such corrections as he might wish to make. That would dispose of the first objection.

The second is more serious. On the representation of Counsel that this is a case where a witness will not and cannot be produced, the Prosecution is in the position of advising the Tribunal in that regard. If it is assured that the witness will not be available and the Counsel for the Defense does desire to cross examine, in other words, does not desire to waive, it would burden the record to admit the affidavit.

The Prosecutor may state his position.

MR. MINSKOFF: Yes; if it please the Court, I was about to say before the objection that with respect to this document, the Court may ignore that portion of it which is a statement of Kurt Gerstein. However, included in this document are a number of documents, such as a letter and certain bills, which are real evidence and are captured documents. This whole complex was introduced in the first trial, the IMT

trial, but we are only introducing here, in view of the ruling of the Court as to affiants who are unavailable, that portion which is documentary and not the statement of the affiant.

THE PRESIDENT: Will you please, Counsel for the Prosecution, if you can, now indicate to us where in the English and German books the parts of the document may be found that are not statements of this witness but documents which you claim are admissible upon another theory?

MR. MINSKOFF: Yes. May I point out first that in the index the second paragraph refers to twelve bills, and the third paragraph refers to a letter. Now you will find those at the page on which they appear. Those are the parts which we ask the Court to take into evidence. On page 74 of the English and 92 of the German. It goes right through from 74 to 86, I believe.

THE PRESIDENT: Very well.

MR. MINSKOFF: 85 is the last one.

THE PRESIDENT: Now just a moment please. Does Counsel for the Defense understand the observations of the Tribunal and the statement of the Prosecutor that the interrogation is not urged by the Prosecution but only the documents referred to, which in our book are found between 74 and the end of the book? Now do you wish to make any objection as to them?

DR. SEIDL: If the Prosecution is only submitting the bills, the annexes to the document, and not the statement of Kurt Gerstein itself, I shall withdraw my objection. I should like to add that in Case IV the Tribunal admitted only the bills into evidence and did not admit the interrogation itself.

THE PRESIDENT: That will be the ruling here, and all of that part of the Exhibit No. 1791 except the documents described in the Prosecutor's statement is excluded from evidence, and the documents only are not admitted into evidence.

MR. MINSKOFF: I should like to make it clear for the record that the documents Your Honor is referring to include the letter dated 9 June 1944.

THE PRESIDENT: Very well. That is our understanding.

MR. MINSKOFF: I understand then that PS-1553 is now in evidence as 1791.

THE PRESIDENT: With the modifications.

MR. MINSKOFF: Yes.

THE PRESIDENT: Very well.

MR. MINSKOFF: The Prosecution now offers NI-9913 as the Exhibit 1792. It is 9913-a, and there is 9913-b as 1793. NI-9912 is offered as Prosecution's Exhibit 1794.

THE PRESIDENT: Just a moment. You are in error on the NI number, are you not? Ours says NI-7959.

MR. MINSKOFF: I am sorry. You are correct. I am mistaken.

THE PRESIDENT: Then NI-7959 is in as 1794, is that right?

MR. MINSKOFF: That is right, Your Honor.

THE PRESIDENT: Very well.

MR. MINSKOFF: And 9912 is offered as 1795. NI-11494 is offered as Prosecution's Exhibit 1796. NI-11389 is offered as Prosecution's Exhibit 1797, NI-11391 as Prosecution's Exhibit 1798, NI-11936 as Prosecution's Exhibit 1799, NI-12110 as Prosecution's Exhibit 1800, NI-12109 as Prosecution's Exhibit 1801, NI-2361 as Prosecution's Exhibit 1802, NO-2363 as Prosecution's Exhibit 1803, NO-2362 as Prosecution's Exhibit 1804, NO-2360 as Prosecution's Exhibit 1805, NI-9909 as Prosecution's Exhibit 1806, NI-9096 as Prosecution's Exhibit 1807, NI-12113 as Prosecution's Exhibit 1808, NI-10185 as Prosecution's Exhibit 1809, NI-10383 as Prosecution's Exhibit 1810, and NI-11953 is offered as Prosecution's Exhibit 1811. That completes the documents in Book No. 83, if it please the Court, and at this time the Prosecution offers to call Mr. Rudolf Diels as next witness. Dr. Diels' affidavit appears in

Document Book 82 as Prosecution's Exhibit 1761. It is on page 46 of the English.

THE PRESIDENT: The Marshal may bring in the witness.

RUDOLF BIELS, a Witness, was examined and testified as follows:

THE PRESIDENT: The witness will please remain standing for the purpose of being sworn, raise his right hand, say "I", and state his name.

THE WITNESS: I, Rudolf Biels --

THE PRESIDENT: And now repeat after me: swear by God, the Almighty and the Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT: The witness may be seated. Mr. Witness, may I inquire of you, have the use of the signal lights in front of you on the stand been explained?

THE WITNESS: Yes.

THE PRESIDENT: May I admonish you further. We have certain translation problems here, and it is necessary that you speak slowly and deliberately, further that you should not feel called upon to volunteer information. Make your answers to the questions that are propounded to you as simple, direct, and brief as possible, and be assured that if further information is sought by Counsel interrogating you, they will ask you further questions. Please bear these things in mind.

The witness is with the Prosecution.

DIRECT EXAMINATION

BY MR. HINSKOFF:

Q. What is your full name, Mr. Diels?

A. Rudolf Diels.

Q. And where do you reside?

A. At Kaltenweide, near Hannover.

Q. With respect to Prosecution's Exhibit 1761, an affidavit executed by you in October 1945, are there any corrections or additions you wish to make at this time?

A. Yes; some statements are made in this affidavit about facts which are not correct. To start with the most obvious point, for instance: I never wrote any books. That could only have been a translation mistake. I deposed some notes in Switzerland, and I think these notes are mentioned.

I have also been informed that Mr. Ilgner had no brother in the Reich Ministry of Economy. These are the facts.

Q. Is there anything further?

A. With respect to the testimony of a general nature, I have to say that in 1945 I deemed matters to be correct, in particular with reference to general knowledge, on which I have to add a few explanations today.

THE PRESIDENT: Mr. Witness, please, when you can, if you will refer to the grammatical paragraphs of your affidavit to which you are speaking it will help us to follow your corrections.

A. I said several times, "It was generally known." This formulation has to be corrected. Under the Third Reich and after I was released from the Gestapo prison to which I had been sent because I knew of and talked about matters which are here the subject of examination, I assumed that these matters were generally known. During the last two years I

have found out, however, that distinctions have to be made in my conception about general knowledge.

I may say now that whoever was an opponent of the system was in a position to acquaint himself with the criminal and illegal acts of the regime. However, whoever was ideologically in favor of the regime heard less of these matters.....or did not want to hear of them. It is my opinion however, even today, that one cannot at the same time say that one was an opponent of the regime and also that one knew nothing.

Q. Anything further? Corrections or additions?

A. No.

MR. MINSKOFF: No questions for the Prosecution. Witness is with the Defense.

THE PRESIDENT: Defense may cross-examine.

CROSS EXAMINATION

BY DR. BERNDT (Counsel for the Defendant tar Meer):

Q. Witness, you made a statement once before, limiting somewhat your previous statement. In order to be very brief and pregnant, let me talk this matter over with you by the figures of your statement. Let me establish first of all whether it is correct that this affidavit was executed, at what date?

A. In 1945.

Q. On October 5, 1945?

A. Yes.

Q. With reference to paragraphs 1 and 2 I have no questions to put to you nor in connection with paragraph 3, since you yourself have testified that your statement that a brother of Ilgner's was a departmental chief in the Reich Ministry of Economics was incorrect.

With reference to paragraph 5: You said that you had heard the name Zyklon. "It was a well-known fact that Zyklon came from a firm in Hamburg."

How did you, witness, hear that this Zyklon came from Hamburg, and when did you hear that?

A. The exact knowledge of the name Zyklon I gained from one of my co-workers in my firm. He was an SD representative. He told me what he knew about gassings, and in that connection the name Zyklon was mentioned. I also conversed with Count Helldorf, a police president who was sentenced to death, and he told me about gassings to which Jews had been subjected.

Q. Excuse me for interrupting you, Doctor. I shall come back to gassing later. Let us now limit ourselves to paragraph 5.

A. Yes.

Q. I asked you where you heard the name Zyklon, and you said that you heard it from a man who worked for the SD (Security Service).

A. Yes.

Q. But now you go on to say, and I quote: "It was a well-known fact that Zyklon came from a firm in Hamburg." May I ask you upon what you based this statement at that time, on 5 October 1945, this statement that it was a well-known fact?

A. I assumed that since this Dr. Schiffmann told me about this matter he didn't withhold it from other people and that persons to whom I in turn talked did not keep this matter to themselves. That is why I gained the impression at the time that it was a well-known fact.

Q. Very well.

A. But I am limiting this "well-known fact" statement because I have since been living for two years among Germans who did not know about these things and who assure me that they did not know. I am only speaking of a well-know fact, within my circle.

Q. Now, Doctor, you will agree with me that SD men who knew about such things were careful about passing on this knowledge?

A. Yes.

Q. So that, at any rate, they couldn't have communicated them to a very large circle?

A. Well, one would assume so.

Q. Now you go on to say, and I refer to the last sentence of paragraph 5, that you had conversations with industrialists who said it was produced at Hamburg. Can you name one of these industrialists today?

A. No; it says here.....

Q. I beg your pardon; I draw attention to Paragraph 5, the last sentence: "I, Dr. Diels, discussed it in conversations with industrialists who said it was produced at Hamburg."

A. I spoke with Wehrwirtschaftsfuehrer Heindrich, in whose circle there were a number of industrialists, of whom I had to assume that they knew about the place where this was produced.

Q. Now, today we know for a fact that the gas was not produced at Hamburg.

A. Yes.

Q. Under paragraph 6 you state, and I quote: "It was common knowledge in 1943 what was being done with this gas." And then you mention the Wirtschaftsfuehrer Heindrich.

Would you give me some explanation of "common knowledge in 1943"?

A. I have already explained how I want this "common knowledge" to be understood.

Q. If I understood you correctly, you don't mean "common knowledge", but a certain circle who had connections with SD men or other people who knew about these matters?

A. Yes.

Q. Very well. In paragraph 7 you say, "In my opinion, the gassings were talked about practically everywhere in Germany."

Can you explain this sentence, in particular how you can say gassing operations were discussed "everywhere"?

A. I am still of the opinion today and I do not doubt in the least that gassing of the insane, for instance, was so widely known that one can speak of common knowledge, with the limitations I have already mentioned. I had also heard of gassing in Russia; I heard of gas cars when I traveled into Russia. I remember it because these matters were the subject of my interrogation after I was arrested by the Gestapo.

Q. Very well. Now, will you please explain the next sentence, "The bosses of I. G. Farben must have known what this gas was being used for."

A. Yes. If I started from the assumption that if gas was being produced in Germany it could only have been produced by Farben.....that was the assumption of the German layman who had nothing to do with chemical matters..... consequently, it appeared that the bosses of the I. G. Farben must have known about it. This "must" was, so to speak, a moral imperative. Naturally, I cannot put myself into the

minds of the I. G. people. I really can't say that they actually knew about it, but I say that they must have had the same opportunity to acquaint themselves with these matters that I did.

Q. Well, when in this sentence you assumed that the gas was being produced only by Farben?

A. Yes, this was my assumption.

Q. Now, if we know today that this gas, the so-called Zyklon, was not produced by Farben.....

MR. MINSKOFF: I object to the question, particularly in the form that it is being asked now; if rephrased it may possibly be all right. It includes information which is not correct and which is in contention before this Court.

THE PRESIDENT: Well, the counsel is entitled to know what the witness thinks about that; what information he has. The objection will be overruled. That is not improper.
BY DR. BERNDT:

Q. But if we have heard here this morning that this gas was not produced by Farben, but by factories independent of Farben, at Dessau, Kollin, will you still maintain this statement?

THE PRESIDENT: That would be improper on the very objection that counsel for the Prosecution made. He is not bound in reciting facts. You may suggest to him the possibility that someone did make gas, or something of that sort.

That objection is overruled.

BY DR. BERNDT:

Q. Under paragraph 8 you state, "It was common knowledge that this gas was used to kill people." Throughout this entire period of time I was living in Germany, near the Rhineland, where these killings occurred. Do you really

think that this sentence, "It was common knowledge that this gas was used to kill people", is correct in the form as it now stands?

A. I have given you the general interpretation of "common knowledge" already. But since I also come from the Rhineland I knew, for example, that people were gassed at Hadamar.

Q. Well, I heard about that too. I would agree with you with this limitation, but not beyond that.

A. Well, human beings weren't gassed generally, but among the people who lived near Hadamar, for example, it was common knowledge.

Q. Very well. I shall accept it with that limitation.

Now, the last fact you altered, referring to books. I don't have to say anything about that.

Under paragraph 9 you say again: "The general talk was that the gas was used on human beings." May I assume that here too you make the limitation we have just mentioned?

A. Within my circle I had to oppose the evacuation of an insane asylum which was in my district, and I naturally had to wonder what would happen to those people if they fell in the hands of those people and my co-workers and I realized that they would be gassed.

Q. There is nothing I have to ask you in paragraph 10.

With reference to 11, you yourself say that it was presumably prussic acid.

With reference to paragraph 12—

MR. LINSKOFF: May it please the Court, these are not questions which the witness has to answer. They are statements for the record by counsel.

THE PRESIDENT: They will be disregarded, and counsel should refrain from getting himself in the position of testifying. The point is well made.

Proceed Counsel.

BY DR. BERNDT:

Q. With reference to paragraph 12, how do you know that Orgacit was a subsidiary company of Farben?

A. Orgacit was erected in my district, and I assumed, as all my co-workers did, that Farben was the only firm in question as having undertaken the building project. If it is wrong, then the general assumption is wrong.

Q. Well, how did you know that the Orgacit was producing large quantities of prussic acid? I am referring to the end of paragraph 12.

A. Well, it was general talk in Hannover that Orgacit was producing prussic acid.

Q. In other words, this remark is based only upon general talk in Hannover?

A. Yes.

Q. Would you please explain the last sentence in paragraph 13, "It might well be that 'typhoid' was also a term used as a camouflage

for gassing operations."

A. I really can't explain it. There must be a mistake in the translation. I can't imagine how this term was used.

Q. Your statement was taken in the English language?

A. Yes.

DR. BERNDT: I have no further questions.

BY DR. HOFFMANN:

Q. Witness, you said that you talked to an SD man about the Zyklon matter. Approximately when was that?

A. That was in the beginning of 1943—pardon me, the beginning of 1944? I made a mistake. 1944.

Q. Can you tell me since when this SD man had had knowledge of this matter?

A. That I cannot say. I cannot say since when he had had knowledge of those things.

Q. Well, how did it happen that you talked to this SD man?

A. In my firm, as was customary everywhere, I had an SD representative. He frequently told me about his experience and his knowledge.

Q. Witness, do you mean to say that in 1944 every SD man could have given information about this matter? Do you think that was generally known among SD men, or do you think that this SD man had special knowledge?

A. In view of the size of the SD, I do not believe that every SD man knew about these matters. This SD representative did know because, he moved in circles of SS Fuehrers in Berlin where I assume these matters were discussed.

Q. In what way did this SD man discuss these matters with you? Did he regret them or did he approve of them?

A. He regretted them, since he knew my personal attitude. He talked about these matters warningly, because he felt that I might get in touch with these matters.

Q. Were you at that time already an opponent of the Third Reich?

A. Yes, I was. And so that you will not think that that is just talk, in 1933 one could also read in newspapers that I approached the American Ambassador and the American Consul General Messersmith and that I told them in detail about illegal acts, and I have not changed my attitude since 1933.

Q. Did this SD man know that you were an opponent of the Third Reich?

A. Yes, he did.

Q. And why didn't he report you to the authorities?

A. I was reported afterwards, but not by him. Even in the SD there were people who didn't approve of such matters.

DR. HOFFMANN: I have no further questions.

THE PRESIDENT: Any further cross-examination?

BY DR. HEINZEL: (Counsel for defendant Wurster):

Q. Witness, in your opening statement you divided the German people into two categories, as it were: one group who approved of the Nazi system, and therefore did not learn about the atrocities; and one group who opposed the Nazi system and therefore had to learn about the atrocities. In that connection I have one question to put to you. Do you think it entirely out of the question that there was a third category of Germans? Those who while not at all approving of the Nazi system, still did not gain knowledge about these atrocities because they moved in circles where they had no contacts with people who knew about such matters?

A. Naturally, there was such groups; although I have to tell you that those people could have gained knowledge, and that they avoided knowing about illegal actions. I am not particularly referring to Zyklon.

Q. At any rate, you admit the existence of such a third category?

A. Yes.

Q. Thank you. I have no further questions.

BY DR. VON KELLER (Counsel for Defendant von Schnitzler):

Q. Witness, earlier you were speaking of the measures taken against you personally because you had knowledge of gassing operations.

Is it true if I assume that the purpose of these measures was to prevent the spreading of such knowledge?

A. Yes; naturally. One time, after having written to an official agency—the agency of Minister Hess—and reporting what I had heard from a German professor who was working for Himmler in Poland, Professor Tuechsen, Stabsleiter, Staenger, Hess's, reprimanded me severely for taking notice of such matters and forbade me to speak about them, in no uncertain terms. He also forbade Prof. Tuechsen to discuss such matters and since such exact knowledge of matters in Poland was spread, the Reichsfuehrer Himmler forbade a certain SS Fuehrer, Himalaya-Schaeffer, to talk about these matters with me any further.

Q. Witness, what would have happened if you or anyone else had passed on this knowledge to a larger circle of persons?

A. Naturally I would have been arrested, and that is exactly what happened to me.

Q. Was it not a fact that the German authorities endeavored to keep these matters as secret as possible.

A. Naturally, that was a fact.

Q. You stated earlier that a more or less large group of persons gained knowledge.

In view of the circumstances which you have just described, would it not have been more correct to specify "knowledge of rumors" and not "knowledge of fact"?

A. Yes; knowledge of rumors. Facts were inaccessible to individuals.

Q. I have one concluding question, Witness. Under paragraph 3 of your affidavit you mention the names of three Farben men. Do you mean to say that these three gentlemen had anything whatever to do with the gassing operations?

A. No.

Q. I have no further questions.

THE PRESIDENT: Is there any further cross-examination of this witness? (No response) Since none is requested, we now ask the Prosecution if there is any re-direct?

MR. MINSKOFF: No re-direct.

THE PRESIDENT: Then the witness is excused, and the Marshal may escort him from the box.

MR. SPRECHER: Mr. President, we have distributed to your Honors, to the Secretary General, and to the Defense counsel copies of our first motion of the Prosecution to correct the English transcript. I discussed the form of presenting this with Dr. Mueller, the legal administrator for all of the Defense counsel, and suggested that with respect to the German transcript, as well as with respect to the English transcript, we would welcome a similar motion on behalf of the Defense, so that we can clear up many of the errors of either transcription or where improper reference was made actually, which all parties will agree to clearing up. Most of the errors which we have incorporated herein, I think, are principally errors in transcription. On the fact of the motion, we indicate that we think that the Tribunal might give a certain amount of time to the Defense, and if in the meanwhile we can stipulate with respect to any divergent views which the Defense might have, we shall be very glad to do so.

THE PRESIDENT: The Tribunal will treat as having been filed the document marked, "First motion of the Prosecution to correct the English transcript, bearing date of 25 November 1947, and will permit the document to remain on file for sufficient time for counsel for the Defense to examine it and to make any objections with reference to the corrections suggested by the Prosecution. Now, gentlemen, we do not like to have matters of this kind accumulate, because frequently we lose sight of them.

Dr. Gierlichs, could you suggest what you think would be a reasonable time for your associates to familiarize themselves with this document and advise the Tribunal as to whether or not they can agree to these corrections?

I may say in that connection that we do not deem it necessary that these corrections be made before the Prosecution

rests. They may as well be made afterwards. I just hesitate to fix a date because I do not know how long you might like to have for your associates.

DR. GIERLICH: Your Honor, as a result of the decision of the Tribunal I should have more assistance as regards interpreters. I do not know when the technical details can be arranged so that the gentlemen can start their work. I should consider it expedient if the questions of corrections of the transcript could be handled uniformly by these two gentlemen, who then could come to some agreement with the Prosecution as to this procedure, as was our proposal initially when we approached the Tribunal with this matter. I should therefore like to suggest that as soon as these gentlemen are here we give them the material, and then it will no doubt be possible to come to some agreement as to corrections very soon. Of course, I cannot say how long the checking and other technical details will take and how long it will take these gentlemen to finish this work.

THE PRESIDENT: That will be very satisfactory. The Tribunal will call the matter to your attention if it seems to be unduly delayed, and we will pass that matter for the time being.

MR. SPRECHER: Mr. President on 22 October 1947, at page 2505 of the transcript, I made a certain response to a question that had been raised by Judge Morris with respect to War Crimes and Crimes against Humanity. We were caught rather by surprise on the point, and I am afraid I said one or two things that, might be misconstrued, and since I lent a certain dignity to what I did say by putting it in the record, I would like to correct myself very briefly. I stated that, "perhaps a war crime could not be considered to exist prior to the actual outbreak of war, 1 September 1939, because actual mortal combat had not taken place in the

case of the aggressive acts against Austria and Czechoslovakia. There are statements in the IMT decision which indicate that my statement as a possibility was entirely wrong, and I would only like to indicate the two places. At page 226 and 227 of Volume 1 of The Trial of the Major War Criminals, underneath the heading, "War Crimes and Crimes against Humanity", there appears the following sentence: "They were perpetrated" -- that is referring to war crimes and crimes against humanity -- "in all the countries occupied by Germany" -- and then, going over to page 334, there is a statement, "The occupation of Bohemia and Moravia must therefore be considered a military occupation, covered by the rules of warfare."

THE PRESIDENT: Very well, your observations are on the record. What's your next step?

MR. SPRECHER: Mr. President, we would like to suggest that we go over until Monday next, at which time we expect to be able to rest, and if not on the following day, Tuesday.

THE PRESIDENT: You have no witnesses immediately ready to put on the stand?

MR. SPRECHER: No, there are no more witnesses who are not confined that have come in, and since we didn't know exactly how long these matters would take today, we are not too well prepared, and in the case of the witness Ohlendorf, Dr. Hoffmann asked me that we do not produce him until his own counsel, who is Dr. Aschenauer, who is also a counsel in this case, could be present next week.

THE PRESIDENT: Very well, the Tribunal feels that it should observe that while this trial has been in progress since 14 August and the trial proper since 27 August, we have only been in session actually 52 court days. There

have been many times when for one reason or another the Tribunal has not been in session, and there have been many instances in which we have not sat for the entire day. In considering the subject of whether or not the Tribunal is unduly pressing counsel in the presentation of this case, I wish you would bear those matters in mind. It is now barely 2:35, but in view of the fact that the Prosecution has said that they will close their case with certain reservations, on Monday or Tuesday next which we all understand, the Tribunal will accede to the wish of the Prosecution. The Tribunal will now be in recess until next Monday morning at 9:30 o'clock.

(A recess was taken until 0930, 1 December 1947)

Official transcript of the American Military Tribunal
No. VI in the matter of the United States of America
against Carl Krauch, et al, defendants, sitting at
Nurnberg, Germany, on 1 Dec. 1947, 0930-1630 hours;
Justice Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.
Military Tribunal VI is now in session. God save the United States of
America and this Honorable Tribunal.

There will be order in the court.

THE PRESIDENT: You may make your report with reference to the
defendants, Mr. Marshal.

THE MARSHAL: May it please your Honor, the defendants are all present
in court.

THE PRESIDENT: Are preliminary announcements from the Prosecution this
morning?

MR. SPEECHER: Mr. President, nothing except that the Prosecution
expects to be able to rest very early today; no foreign witnesses have
come in.

THE PRESIDENT: Anything from the Defense this morning?

DR. HEISTZELER (Counsel for Warster): Your Honors, when the Prosecu-
tion submitted the affidavit of a Frenchman for the first time a few
weeks ago—a Frenchman who had worked in a Parbon plant during the war—
I had the honor to point out to the Tribunal that the Defense saw itself
forced now to find out other Frenchman as witnesses for the proceedings
and that it would be necessary for that purpose to send one or more
representatives of the Defense to France. In the meantime I got in
touch with the Defense Center in this court house and, as was to be feared
previously, I was informed of the following, and I quote:

"Military Government has notified this office that it is not possible
to obtain travel clearance to France for German civilian unless it is
for a serious illness of a close relative in France. There is no possible
medium to exchange German marks for French francs."

The fact that no foreign currency can be granted for a trip to France was confirmed to me by other sources of information. The same seems to apply to the rest of the foreign countries. In view of this situation, I should take the liberty to ask the Tribunal, with all respect, whether the Tribunal sees any possibility to assist the Defense to get permission to go to foreign countries, and to assist them in the procurement of foreign exchange.

THE PRESIDENT: The President must confess total ignorance with reference to the problem suggested by counsel for the Defense. We should be very happy to have any further suggestion that you may be in position to make as to how this problem may be met, if you have any, or to hear from the Prosecution in that regard. I can only say that within the limitations imposed upon it the Tribunal, I am sure, would be inclined to grant whatever assistance it can to the Defense in arranging for the presentation of its evidence in this case. That is about all that the President feels free to say to you at this time.

We would be glad to hear any suggestions from any other counsel for the Defense or from the Prosecution as to whether there is any practical method of meeting the problem that you have suggested and as to what part, if any, the Tribunal can play in solving that problem.

We shall consider it in any event and discuss with the counsel--perhaps in chambers would be more satisfactory.

MR. SPEICHER: The same problem came up in the first case to my own personal knowledge; I think that the only thing that was worked out with respect to the access to persons abroad was by application to the Tribunal and the submission of interrogatories, and so forth. No German counsel, so far as I know, has ever been granted permission to travel abroad.

THE PRESIDENT: May I ask counsel for the Defense; May I inquire of you? Have you given any consideration to the possibility of arranging for local representation in France of some French national to handle this matter for you?

DR. HEINTZELER: Your Honor, this question has also been investigated, but that is also impossible because of the lack of French francs so that we cannot employ a French counsel or other representative in France.

With regard to the possibility stated by the Prosecutor just now, the fact that interrogatories can be sent abroad, may I point out the following. An interrogatory can only be sent if we know the name of a witness and his address. In this case, however, we are concerned with a great number of foreign laborers who worked in Germany. The main activity of a representative of the Defense abroad would be, first of all, to find out in tedious, detailed work the names and addresses of individuals, and only then could we send interrogatories.

THE PRESIDENT: Well, the Tribunal will give consideration to the matter, and I take the liberty of suggesting that perhaps an informal conference with counsel in chambers sometime today or tomorrow would be a better approach to the problem.

Prosecution may continue with the presentation of its case.

MR. SPRECHER: May it please the Tribunal, the Prosecution has filed with the Secretary of the court a motion for the re-consideration of the ruling by the Tribunal which rejected the Prosecution's offer of two affidavits by deceased clients. The motion is dated the 29th of November 1947, and signed by the Chief of Counsel.

THE PRESIDENT: We have that motion. May I inquire, has distribution been made to the Defense of that motion?

MR. SPRECHER: The printing was only accomplished yesterday afternoon, Mr. President, and I have seen that copies were given to the Defense this morning in the proper number.

THE PRESIDENT: Is it the desire of the Prosecution to be heard orally on the motion?

MR. SPRECHER: No, Mr. President; we think that the motion, which is rather full, is adequate to indicate our view on the matter.

THE PRESIDENT: Is counsel for the Defense ready to say whether or not

they desire to make any response to this motion? Perhaps that inquiry is a bit premature and we will ask later if the Defense will take notice of our question; sometime at the recess or at the noontime we will make that inquiry again.

MR. SPEECHER: Mr. President, the Prosecution would like to offer approximately 20 documents before it rests its case, subject to certain specific reservations.

THE PRESIDENT: Are these in the folder, do you know, counsel, that was placed on our desk just a moment ago?

MR. SPEECHER: Almost all of them are; however Mr. Minskoff and Mr. van Straet will have a few more that are not in those folders.

THE PRESIDENT: Very well.

MR. SPEECHER: The first document is NI-11591 which may go in as Prosecution Exhibit 1812, with your permission.

JUDGE MORRIS: Would you describe that document, please? I cannot read the NI number on my copy.

MR. SPEECHER: Yes; the NI number is not plain on the first page. The NI number is 11591.

JUDGE MORRIS: And what is the document?

MR. SPEECHER: The document, Judge Morris, is an interrogation of the defendant von Schnitzler, and it contains those extracts which I read before the Tribunal on the 2nd of September, 1947, at pages 311 to 316 of the transcript. Now, the purpose in offering this document is to get before you a certified copy of those extracts I read, and also to assist you in evaluating the Schnitzler statements and affidavits.

The next document is Document NI-12547 and may go in as Prosecution Exhibit 1813. This is the last interrogation of the defendant von Schnitzler which was made before the indictment was issued and the next one just after the indictment had been filed, but not served.

You will note that the defendant von Schnitzler, Your Honors, has been away for three and a half weeks after he had been principally interrogated for sometime, and in this interrogation he was asked, over on page 2, if there were any further changes which he would like to make, or alterations he would like to make, and at the bottom of page 2 he says, "No, with two exceptions," which I think you will want to note.

DR. SILCHER (Counsel for von Zuerich): Mr. President, the document which is proposed to be submitted is not in the hands of the Defense counsel. We don't have it now and we certainly did not receive it forty eight hours previously. Therefore, we are not in a position to get any idea with regard to these documents and to tell you whether we want to make an objection or not. And, therefore, I must object against the submission of these documents at this time.

MR. SPEECHER: Mr. President, any of the documents which I shall personally refer to this morning have been in the Defense Center anywhere from

three days to five days. The last day, so far as we know, was last Friday when some of them were served. We have also here a few extra copies as a convenience and a courtesy to the Defense, and they may refer to them here.

THE PRESIDENT: Counsel for the Defense will appreciate the circumstance that the Prosecution is approaching the end of its case-in-chief. The Tribunal is anxious to conclude this phase of the trial as promptly as possible in order to give counsel for the Defense the advantage of as much time as it can in preparation for its case-in-chief.

May I inquire of counsel for the Defense if there would be any objection to the Prosecution introducing this document and any other that it has with the reservation that if counsel for the Defense very promptly find any basis for an objection to the introduction of these documents that we afford you a timely opportunity to make your objections and not foreclose you by the introduction in evidence. If we can do that we can now save some time and, on the face of the record at least, make it possible to close the Prosecution's case at the same time reserving in all of Defense counsel the right and privilege to make an objection to the document subsequent to its receipt in evidence.

I direct that remark not only to counsel who is now addressing the Court but to all of Defense counsel. If any of you have any objection to such procedure we should be very happy to have you state it. If not, we will permit the Prosecution to offer these documents subject to the subsequent right of the Defense counsel to raise questions as to their admissibility.

DR. SILCHER (Counsel for von Knieriem): May I consult with my colleagues for a moment, please?

Yes, we are in agreement, your Honor.

THE PRESIDENT: Very well, that will be the understanding. You may continue, Mr. Prosecutor.

I take it that Prosecution has no objection to that procedure.

MR. SPEICHER: Certainly not, Mr. President. I understand, actually,

that it is more or less in practice conventionally.

THE PRESIDENT: That is right.

MR. SPEECHER: We now would like to make reference, Mr. President, to Prosecution Exhibit 1571 for identification. That is Document NI-11106. This document, as Your Honors will recall, was marked for identification during the re-direct examination of the witness Struss. At that time the Prosecution did not have proper English and German copies. We now have distributed them and, therefore, at this time we would like to offer Document 1571 for identification, in evidence.

THE PRESIDENT: By that do you mean to say that it bears exhibit number 1571?

MR. SPEECHER: Yes.

THE PRESIDENT: Very well. Then the document marked for identification 1571, is now admitted in evidence as the Prosecution's Exhibit 1571.

MR. SPEECHER: Because of the prior objection I am afraid I neglected to tell you where I would like to have you place the documents that have been offered, and I will do that now if you will permit me to go back to these last two documents. The two Schnitzler interrogations could very well go just after the index in Document Book 16, since those contain affidavits of the defendant Schnitzler—and I am referring to Prosecution Exhibits 1812 and 1813.

The document just referred to, Exhibit 1571, could very well go at page 140 of Document Book 28. That is the last document in Book 28.

The next document is NI-12628 which we would like to mark in evidence as Prosecution Exhibit 1814.

THE PRESIDENT: Just a moment. Until we find the document—we have a 12627, I know....

MR. SPEECHER: I am sorry, I meant to say 12627.

THE PRESIDENT: Very well.

MR. SPEECHER: This is an affidavit by Ernst Struss concerning the planning of Buna capacity, and it could also go very well at the end of

Document Book 28.

The next....

THE PRESIDENT: Just a moment, now what exhibit does NL-2627 bear, please?

MR. SPEECHER: I gave that the exhibit number 1814, with the permission of the Secretary.

THE PRESIDENT: Thank you.

MR. SPEECHER: The next document, NL-11711, may go in as Prosecution exhibit 1815, with your permission. This is a letter dated the second of November 1934, from the deceased Vorstand member Ehl (B-u-b-l) to the defendant Gattinoni, with a copy to the defendant Ter Meer, concerning I.G. discussions with the Ministry of Economics on the expansion of aluminum production. That could very well go into your Document Book 30, at page 4-A; that would be after Prosecution Exhibit 90, which is the first document in Book 30.

The next document is NL-13740, and may go in as Prosecution Exhibit 1816. Your Honors will recall that during the re-direct examination of the witness Struss the other day the witness was shown some rather voluminous audit reports of D.A.G., and at that time Your Honors felt that it was not proper re-direct to question him concerning the distribution because his recollection was not immediately refreshed by seeing those audit reports. Since they are very voluminous, Dr. Hailbrun, one of the analysts on our staff, has made a brief condensation of some of these voluminous reports, and for each summary he has made reference to some attachment which are excerpts or letters which were attached to those audit reports. The purpose of the Prosecution is to show the knowledge on the part of Schmitz, Gajewski, the TEA, the Central Finance Administration, not only of the general activities of the D.A.G. but also of the activity of the Verwertchanie.

The next document is Document NL-6170, which may go in as Prosecution Exhibit 1817. The secretary reminds me that I did not indicate where Dr. Hailbrun's affidavit, Prosecution Exhibit 1816, should be placed in

your document books. It should go in Document Book 33, at pages 27-A and following, just after Exhibit 327.

Prosecution Exhibit 1817, the report of the figures for 1936 by the Department of Raw Material Supplies of the Reich Office for Military-Economic Planning, dated December 1938 — that could very well go into your Document Book 33, as the last document.

Now, this report is submitted to you to show the dominant position of I.G. and D.A.G. in the production of raw materials for military explosives and gunpowder during the years 1936 and '37.

If your Honors will turn over to page 2, which is also page 2 of the original, you will see some rather unhidden references to the objectives for which these figures were being gathered in connection with "Mob" plans and a possible war.

The next document is NI-12724, which may go in as Prosecution Exhibit 1818, and this could be inserted in your document book 36, at page 130-A, after Prosecution Exhibit 659, the affidavit of Ehmann (E-h-m-a-n-n). Now, your Honors will recall perhaps that the Prosecution was taken with a certain amount of surprise during the so-called cross-examination of the witness Ehmann by the Defense, and the witness Ehmann came prepared, to our surprise, with very detailed figures concerning what he claimed at that time to be the production and production capacity figures in the Reich for chemical warfare agents, for poison gasses. The Prosecution did not have its documents concerning this subject present in the court-room at the time, and, furthermore, it might have been considered improper re-direct examination to go into the subject at that time fully with the witness. We were not — since we had not planned that he talk on that subject — prepared to know what he would say, if his recollections were refreshed by the actual documents in the matter. And it is because of that that the next several documents which I am about to offer are being laid before your Honors.

(Sprecher)

The first one is the affidavit of Gerhard Ritter, Prosecution's Exhibit 1918 which states that on the 8th of May, 1942, Gebechem, that is to say, Krauch, assessed the existing production facilities in the poison gas field as follows:

I. G. Plants, 3.2 per cent; Reich owned plants which were operated by I. G. Farben or I. G. subsidiaries, 86.8 per cent, and other plants, 10 per cent.

Now I think I can tell Your Honors how some of the apparent conflict in the testimony and the estimates by the various affiants and witnesses such as Struss and Ehmann came about.

If you look at Prosecution's Exhibit 1572, that is NI 11105, which is a record of the United States Strategic Bombing Survey, which shows plant capacities in the poison gas field, as shown by German documents as of 1 December, 1942, you will find the document to which Ritter refers here. Now that document is rather voluminous and since Ritter incorporates parts of it in this affidavit, we do not intend, at least at this time, to offer Exhibit 1572 for identification.

The conflict seems to have come about because of the so-called Orgacid Company which operated on paper, the Amendorf Chemical Warfare Agency plants.

We introduced documents previously indicating the actual relationship between I. G., Orgacid and Amendorf, and I would like, in preparation for the next two documents, to mention briefly those documents.

The first is Prosecution's Exhibit 351, which is NI 5681, which is found in Document Book 13, at page 45. That is the 1935 contract between I. G. and Orgacid, and then you will note, Your Honors, that I. G. was to build the Amendorf plant, and to assist in its technical operation. Then if you go to Exhibit 621, which is NI 5669, which is in Book 35 at page 30, you will see in an I. G. memorandum what the participation was in Orgacid, with the notation that the technical

management was under I. G. and after that is the word, "confidential."

Now with that background we would like to offer the next two documents.

The first is NI 12725, which may go in as Prosecution's Exhibit 1819. This is an affidavit by Elmann who was previously a witness here in which he summarizes what he stated in his testimony, and where he indicates how the percentages with respect to poison gas production or poison gas capacity would change if the Orgacid or the Ammendorf plants were put into the second column, namely under "Factories Owned by the OKW" in which the technical management, or the operational management was in the hands of I. G.

The next document, NI 12--excuse me, before I go to that, I might say that this document, Prosecution's Exhibit 1819, could very well be placed in your Document Book 36, at page 130-b, also following Prosecution's Exhibit 659, which is the original Elmann affidavit, so that these things come together in your Document Books.

The next Document, NI 12678, may go in as Prosecution's Exhibit 1820. This is a second affidavit by Elmann which will indicate certain poison gas figures. Mr. President, may I have just a minute?

THE PRESIDENT: Certainly.

MR. SPRECHER: It should go in the Document Book, Your Honor, just after the other Elmann affidavit.

THE PRESIDENT: That is Book 36?

MR. SPRECHER: Yes, Book 36, at page 130 and following.

THE PRESIDENT: Very well.

MR. SPRECHER: The next document is DC 3, which may go in as Prosecution's Exhibit 1821.

DR. DIX: I should be grateful to Mr. Sprecher if he might give me the benefit of his opinion as to the question of procedure, whether it is admissible and in accordance with a well ordered trial procedure, that if the affidavit of an affiant is submitted, who has al-

ready been examined in cross-examination, then re-direct had followed, and if the Prosecution was not in a position to establish what they were surprised about, in the re-direct, then suddenly to have the voice of this witness brought before the Tribunal again in a new affidavit, which begins this whole cycle once more, which would require another cross-examination by the Defense and a re-direct. That is something new to me, but I should be glad to be instructed otherwise. I am merely astonished. I am of the opinion that such a procedure will bring a trial to eternal dimensions. It must be finished some time or other. I do not want to object at this time. However, I think we can achieve agreement in this question of procedure if we talk about it.

MR. SPEECHER: Mr. President, we are not personally very astonished. We would have to, before we ended the case-in-chief, take care of any obvious inconsistencies in one way or another. Now since the affiant Elmann, at the time he was on the witness stand, produced some figures and some detailed classifications, we could scarcely consider him our witness for that purpose, and the witness very appropriately seemed to have ready at the time for Defense counsel to ask him questions about some very nice, graphic figures which were somewhat in conflict with figures which we had previously relied upon.

Now after we checked into the facts of the matter, it appeared only appropriate to ask the witness, Elmann, "What do you say to that now?", rather than to submit three or four other affiants, or a lot more voluminous documentation on the same point.

Dr. Dix is perfectly correct that now the Defense, of course, may request that this affiant be brought before the Commissioners for further examination, and he is also perfectly correct that generally speaking you cannot recall your own witness for the same fact, but he was not our witness with respect to the production figures which were in those very nicely organized tables which he produced during

cross-examination by the Defense.

THE PRESIDENT: This whole method of using affidavits in lieu of witnesses and of providing for subsequent cross-examination of the witnesses is somewhat unprecedented and certainly unorthodox so far as recognized procedure is concerned, but we have observed that it will perhaps expedite the trial, so long as the fundamental right of cross-examination is provided for, and we have consistently done that, and it will be our policy to continue to do that with respect to these affidavits now being offered by the Prosecution. That is to say, the Defense, upon request, will be afforded an opportunity to cross-examine, and this seems an appropriate place to say that we invite counsel for the Defense, when they come to their part of the case, to utilize the same method, if it will conserve time of making a showing by affidavit.

We think that it is a conservation of valuable time for the Tribunal and for counsel. Of course, the Prosecution should not be allowed indefinitely to chop its presentation of its case up into installments, but we can see some justification for this instance, when the affiant is dealing with calculations and figures, that he could not be expected to have readily on his tongue at the time he is in the witness box.

It is just sufficient to say that we think that this procedure may be justified by reason of the kind and character of the evidence that the witness is dealing with, and that upon proper request, an opportunity will be provided for the cross-examination of the witness with respect to this subsequent evidence.

We take it, since the Prosecution is about to close its case, that there will be no abuse of this, by continuing to bring in its evidence in installments like this, because we all understand, after all, that we are in the last stages of the presentation of the evidence of the Prosecution.

MR. SPEECHER: Mr. President, I think this is the only example that we have had of this, and we have done it because we thought it would make for clarity. Otherwise, we would have been obliged to bring in other witnesses.

DR. DIX: Then I understand Your Honors correctly that this probable and possible cross-examination can be conducted within the framework of the case in the presentation of the Defense. I do not think that there will still be time to call this witness Ehmann, before the Prosecution closes its case that is, tomorrow.

THE PRESIDENT: We have in mind, Dr. Dix, some of these so-called loose ends of cross-examination. By that, I mean matters that have arisen lately of which this is typical, that before or at the time the Prosecution closes its case, the Tribunal will make an order transferring the matter of supervising the cross-examination of these witnesses to a Commissioner, who has already been appointed, and having him arrange a convenient time with the Prosecution and Defense staff for the cross-examination of his witnesses.

DR. GATHER, counsel for the defendant Ambros:

Mr. President, the witness, Ehmann, seems to be a precedent; also in accordance with the significance attached to him by the Prosecution. Therefore, I ask Your Honors, if you would be kind enough to decide already at this time whether the witness should be called to Court here for cross-examination before the end of the Prosecution's case. The defense is ready to conduct the cross-examination tomorrow if it is desired.

MR. SPEECHER: The Prosecution does not see why, and I do not think Your Honors will see why this question of Orgacid and Ammendorf can be particularly clarified any more than it has by the witness Ehmann, but he principally states in his affidavit that if he were to take the figures which he had in his oral testimony, put underneath Orgacid or Ammendorf, over to the other plants, the figures would change in

certain ways.

It is more or less a mathematical computation and we do not seek to use the witness, Ehmann, to prove whether or not that is a justified matter or not. That is something Your Honors will have to decide upon other evidence, such as the two exhibits I mentioned prior to the time I offered the last two Ehmann affidavits.

THE PRESIDENT: That is certainly true, but at the same time, it is not the function of the Tribunal to advise counsel for the Defense whether or not they should or should not cross-examine a witness. That is for them to decide, and as to whether or not the witness is to be brought here tomorrow or before the Prosecution rests, and the Tribunal recesses, is purely a matter of convenience.

If the witness can be and is produced, you may cross-examine him here; if not, you may cross-examine him if you so desire, before the Commissioner. We take it that there is no significance to the oral cross-examination of a witness before the Tribunal, when the subject of the cross-examination is in the first place an affidavit.

We did not see him when he made the affidavit; we were not present when he gave the statement that was the subject of the affidavit, and certainly there is no disadvantage to the Defense that the cross-examination is conducted out of the presence of the Tribunal, because after all, then we would have the evidence of the Prosecution and the Defense submitted to the Tribunal in written form, and neither party would be prejudiced by the fact that part of the testimony had been orally received by the Tribunal and part in affidavit form; so, Counsel, you may determine for yourself whether or not you wish to cross-examine this witness to whom you referred.

If you do, the Tribunal will see that facilities are provided for that purpose either before the Tribunal, if the witness can be and is produced before we recess. If not, along with other witnesses the matter will be referred to the Commissioner.

DR. GATHER: Mr. President, I should at this time like to express my desire to cross-examine the witness Elmann before the Tribunal. The argument by the Prosecution proves to me the necessity of calling this witness before the Tribunal. We may have some objections, and I cannot imagine that the Commissioner would be able to determine as easily as the Tribunal, concerning those objections. Therefore, I should be very grateful if this cross-examination could be conducted tomorrow if there are no technical difficulties. The Defense would appreciate that very much.

THE PRESIDENT: The Prosecution can speak for itself in that regard. If it can and desires to produce the witness, very well, but if the witness cannot be produced before the Tribunal recesses, as we have indicated before, the cross-examination will be conducted before the Commissioner. If any questions arise as to the admissibility of evidence, proper reservations can be saved upon the record before the Commissioner, and this Tribunal will subsequently give due consideration to those matters, but no substantive right is affected, by the transfer of the witness or any other witness of this character, to the Commissioner for cross-examination.

The Prosecution can speak, perhaps now. Do you desire or can you produce this witness?

MR. SPRECHER: We do not desire to, Your Honor. This witness is in Stuttgart. It would require the most extraordinary means to bring him here. Besides—I am just informed by Defense counsel, in the middle of my presentation, that they believe Elmann is here.

I am informed by Dr. Hailbrunn, who has been dealing with Mr. Elmann, that he left this last week. Now if you have seen him, Dr. Siemers, as of this morning, I would be very glad to know about it, because it conflicts with our information.

(Dr. Siemers shook his head.)

I think the matter is clear, Your Honor.

THE PRESIDENT: It is a matter that we will not take any more time to consider. We have indicated now that if the witness is produced, and we are in session, we will hear the cross-examination. If we reach the end of the Prosecution's case, and the witness has not been produced, the cross-examination will be before the Commission. Now that is final. Proceed, Mr. Prosecutor, with your next presentation.

MR. SPRECHER: Document NO EC-3, Prosecution's Exhibit 1831, is offered to Your Honors because the defense made some references to Exhibit 1171, that is Document NI 440, in Document Book 63. We would like to have you place Prosecution's Exhibit 1821, Document EC-3 at page 30 of the Document Book 63, that is page 25 in the German.

Your Honors will recall that NI 440, Exhibit 1171, was a directive concerning the Nazi policy, the policy of the Third Reich in the occupied East.

The original document which was in the IMT archives was lost. The translation of that document was preserved, and we offered the translation, and of course, the German copy which defense obtained was a re-translation from the English translation back to the German.

Now we have here in this Document EC-3 a further reference to this whole policy. This refers to an order of the WIRue-AMT, the Supreme Headquarters, - that is the Military Economy Office, from 29 July, 1941, and if you compare the date of that order and the contents of this document, it seems to me that any possible doubts which have been raised by Defense's objection to Exhibit 1171 have been vanquished.

Mr. Van Street has several documents to present.

DR. HOFFMANN, Counsel for the defendant Von der Heyde:

Mr. President, may I remind the Tribunal of the fact that the witness Ohlendorf is available, and if the Tribunal would specify a time when it wants to hear that witness, I should like to inform Court

No. 2 of the time.

THE PRESIDENT: Very well. That is in line with our promise to Judge Musmanno, that we would advise him when the witness is to be produced. If the Prosecution is in position to say now when it will be convenient, then the word may be carried to the other Tribunal so he may be excused.

MR. SPRECHER: The Prosecution has used up a great deal of its time in the last three or four days in order to be able to rest its case subject to very specific reservations, this morning. We do intend to do. The witness Ohlendorf, the affiant Ohlendorf, as a number of others, we would like to bring before the Commissioner or else Your Honors can set a date at some time in the future when you can reconvene again.

THE PRESIDENT: That is a matter somewhat embarrassing to the Tribunal. After an informal conference with counsel for the Prosecution and the Defense, the President of this Tribunal went to the President of the other Tribunal and made arrangements for this witness to be excused and to be brought here to testify. We dislike now to have to go back and tell the presiding Judge of the other Tribunal that arrangements have been changed, and that this witness is now to be taken before some Commission.

We think you had better go ahead and carry out your representations to the Tribunal with respect to that witness, but you may, so far as today or tomorrow is concerned, fix your time.

If you can indicate that, we will see the Presiding Judge of the other Tribunal is advised, and we will conduct that cross-examination.

MR. SPRECHER: We were not advised, Your Honor, of the detailed arrangements you have made, or we would have changed the program. I understand that Mr. Amchan was advised, but I was not advised.

THE PRESIDENT: That is very well.

MR. SPEECHER: Mr. President, we will try to give notice after we have rested, subject to reservations as to what time that would be convenient. The Prosecution had made no plans in that regard.

THE PRESIDENT: Very well, let us know in advance, sufficient time to tell the other Tribunal because there must be an excuse down there on the record before he can be brought here to testify, and I have promised the Presiding Judge to see that the request will be given to him a sufficient time in advance that the order can be made in the other Tribunal.

As soon as you can arrange your schedule so that you know when it will be convenient, let the Tribunal know when. Counsel for the Defense and you may do it this afternoon or tomorrow, it makes no difference to us.

MR. SPEECHER: I would say some time tomorrow but we have not had a chance to figure out our schedule. The number of counsel on the Prosecution staff — is very small, and we have a number of things that we have been doing, Your Honor, so we will try to reorganize our forces and make some arrangement so that we can get this matter ready for tomorrow.

THE PRESIDENT: Very well.

MR. VAN STREET: May it please the Court, my remarks will be directed to Book 71, and particularly to the documents therein on Kalle & Co.

The Court will probably remember that on the 5th of November, the transcript of the record will show at pages 3323 to 3334, inclusive, that the Prosecution under Count 3 (a), made an offer of documents pertaining to Kalle & Co. Objection was made by the defense. The main basis of this objection being that whereas there was an admitted stock control of Kalle & Co, by Farben, that there existed an independence of management, and that as shareholders Farben's responsibility could not be extended to the management of the firm.

It was strongly urged upon the Tribunal by Dr. Achenbach, among others of the Defense Counsel, that there was no particular point involved in Kalle & Co's employment of foreign labor, because practically all firms in Germany employed foreign labor, and that as I. G. Farben and Kalle & Co. were independent companies, with their own Boards of Management, that there could not be any responsibility on the part of Farben and these defendants in connection with labor matters at Kalle & Co.

At that time, the Prosecution withdrew its offer of these documents but reserved the right to offer them at a later time. The Prosecution now proposes to offer two documents which will show not only the cloaking methods carried out by Farben in concealing its control of its subsidiary firms, that is Kalle and Company, but also the extent to what Farben controlled labor, and other matters of Kalle & Company.

The first document which I now propose to offer is NI-1453 which may be marked as Prosecution Exhibit 1822 and I now pass four copies of this document to the Bench. We might add that the distribution of these particular documents was made to the Defense Center on Friday afternoon. This, as Your Honors note, is a letter dated 13 August 1940, in which is included the Minutes of the Conference on 13 July 1940 which was held at Kalle & Company. The addressee is Dr. Hoyer, who was in the Legal Department for Chemicals with I. G. Farbenindustrie at Frankfurt. The most important item in the letter is the last sentence of the excerpt:

"The most prominent measure is perhaps that this year, for the first time, our firm (Kalle & Company) is not mentioned in the business report of the I. G. as a subsidiary company, in order to conceal the most obvious proof from foreign investigations into the connection between Kalle and the I. G." The rest of the letter I think, your honors, speaks for itself. The next document —

THE PRESIDENT: Just a moment; I think there's some confusion with reference to the translation.

MR. VAN STREET: The next document, if your Honors please, is NI-12739, which may be marked as Prosecution Exhibit 1823 and I now pass four copies of this document to the bench. If your Honors please, this is an affidavit, the original being in German, which has been made by Mr. Kurt A. Hauptmann, an analyst on the Farben Trial Team. In this affidavit there's been included excerpts of correspondence which bear on the problem which is before the Tribunal at this time. That is to say, the admissibility of the documents on Kalle & Company. Under (1) which is an excerpt taken from a folder or a file found in the Kalle &

Company's office and which is marked "Buero Bartrams" — I show this to the Tribunal — there is a reproduced letter of 8 October 1942 with the heading "I. G. Farben Industrie A. G., Dr. Bartrams," addressed to the heads of the Personnel departments. The letter reads:

"Gentlemen, our next meeting is to be held on Monday, 2 November 1942, at 1000 hours at Leuna. Should you wish to discuss some matters outside the under-mentioned agenda, please notify me as soon as possible. Hail Hitler! signed Bartrams."

Then in that letter the agenda follows in detail and significantly this reproduced or mimeographed letter carries the typewritten notation: To Prok. Kuhl-Schatten, Dipl. Ing. Michaelis, and Michaelis is the head of the Personnel Department at Kalle & Company. And, under No. (2) there's a reproduced or mimeographed letter of 21 November 1942, with letterhead: "I. G. Farbenindustrie A. G.," addressed to the heads of the Personnel Departments. Subject: "Christmas aid for personnel drafted for work and for personnel working abroad on building projects." Then follows a reference to a directive issued in NO. 269 of the German Official Newspaper of 16 November 1942 and the letter ends: "Please take notice of this and act accordingly. Hail Hitler! signed Bartrams", and it must be remembered, if your Honors please, that Bartrams was the Head of the Statistical Office, so to speak, of the defendant Schneider, Schneider being the Chief Plant Leader of the Farbenindustrie in charge of the Social Welfare matters. Item No. 4 is the copy of a letter of 1 April 1943, signature "Kalle & Company" and signed Dr. Schmidt and Dr. Mauss, addressed to I. G. Farbenindustrie, Dr. Bartrams' Office, Leuna. It contains this quotation: "Payment of Eastern workers during illness: Re: the local circular letter of 16 March, we want to comment that we have put into practice, and shall adhere to, the procedure recommended in the Reich Labor Gazette regarding payment of Eastern workers during illness."

Now, the next file which was found in the Offices of Kalle & Company, is this green folder which I hold for the Courts' vision, and

with the title: "Correspondence with I. G. Firms concerning pay and workers problems". The first item of this folder we have incorporated in this affidavit is a letter dated 16 November 1942 with the letterhead "I. G. Farbenindustrie" and it has been directed to the plants of I. G. which will be noticed on page 3 of the affidavit and to the plants, among others, Kalle and Company and Dynamit A. G., Troisdorf. The subject of this letter is "Reports and Tabulations." I will just suffice to mention a word or two about these two paragraphs. The letter starts out:

"Subsequent to our letter of 26 January 1942, and in view of the increasingly difficult conditions, we are going to dispense with yet another series of reports or as the case may be, to require them at longer intervals. Up to date you supplied us monthly with and then there are listed six different subject matters, there being of significance so far as the present matters are concerned Item 2, "Statistics of Employees" and 3, "Statement of Overtime."

Item No. 2 on page 4 is a copy of a letter of the I. G. Ludwigshafen, Employee Relations Department, dated 15 April 1942, addressed to the heads of the Employee Relations Department. The copy contains a note to Messrs. Prok. Kuhl and Michaelis and also Schneider. The letter concerns questions in connection with the Ordinances on the subject of compulsory savings and health insurance and after some remarks regarding a certain lack of clarity on the subject the following statement occurs under Sec. 1, in the last paragraph: "We request accordingly that the compensatory amount for those compulsory savers voluntarily insured with health insurance societies be transferred to the plant's health insurance."

Then on page 5 of the affidavit, if your Honors please, Item 4, tracing of a letter, letterhead "I. G. Ludwigshafen, Personnel Department" and is again addressed to Heads of the Personnel Department, subject: Compulsory Savings, dated 27 November 1942. It deals with the modifications in compulsory savings procedure affected in accordance

with the Third Ordinance on Compulsory Savings of 26 October 1942 in the Reich Law Gazette.

And now, of significance, I think, is the next item on page 5, namely, 5-A. This letter is from the I. G. Farbenindustrie, Hoechst combine or plant, and is addressed to the Health Insurance Board of Kalle & Company. The subject is stated as follows: "Pension Geschwister Heimann in Bad Soden; admission of your employees."

Now, in order to understand 5-A we look at the next paragraph and this concerns and relates to a letter reproduced by phototype bearing the letterhead, "Plant Health Insurance Board, Kalle & Company", addressed to Geschwister Heimann, Bad Soden. The letter is dated 18 February 1943 and the subject is stated as "Admission of I. G. Farben employees to your boarding house" and, of course, they are talking about Kalle & Company employees. Then it goes on to say: "This is to confirm our agreement with you in accordance with which you will admit I. G. employees to your boarding house for the duration of this year's season."

I would like to excerpt just one more matter, if your Honors please, which is Item 6. This is a mimeographed letter dated 30 September 1943 and the data referred to are as follows: "French Prisoners of War", and the first sentence reads: "According to information received, the next issue of the Reich Labor Gazette will publish the modification of the wage regulations for French Prisoners of War." That letter is from Levarhusen to Kalle & Company. Then some of the other documents on pages 8 and 9, if your Honors please, relate to the exchange of employees from Kalle & Company to Hoechst and also to Berlin. I think this is a sufficient summary, perhaps it's a little too detailed.

DR. DIX: Dr. Dix for Schneider: I merely want to inform your Honors that we have found out in the meantime that Kalle and Company belonged to the Supervisory Council or Unternehmungsrat. In other words, the case of Kalle & Company is different from D. A. G. I have no further statement since the Counsel Achenbach is not present today.

THE PRESIDENT: Very well.

MR. VAN STREET: If your Honors please, I would like very hurriedly to introduce into evidence the documents under Kalle & Company?

THE PRESIDENT: In Book 71?

MR. VAN STREET: In Book 71. I will mark them into evidence without comment, if your Honors please.

THE PRESIDENT: Very well.

MR. VAN STREET: The first Document NI-2992 will be omitted because it's an affidavit and would require that one more affiant come to testify.

NI-4036 may be marked as Prosecution Exhibit 1824. It's a letter of 22 May 1943.

NI-4034 may be marked as Prosecution Exhibit 1825.

NI-4035 may be marked as Prosecution Exhibit 1826.

NI-4037 may be marked as Exhibit 1827 and, finally, NI-6187 may be marked as Prosecution Exhibit 1828.

THE PRESIDENT: Very well.

MR. SPRECHER: Mr. Minskoff has several documents.

MR. MINSKOFF: May it please the Court, in Book 74 the last exhibit is a picture, NI-12071, and has been marked as Prosecution Exhibit 1475 for identification. I understand that Dr. Seidl has agreed that this picture was taken at I.G. Auschwitz and represented on the picture are Reichsfuehrer SS Himmler and Mr. Faust, an I.G. Farben engineer. I believe Mr. Seidl wanted to say a word or two on that.

DR. SEIDL: Dr. Seidl for Duerrfeld, Mr. President, Dr. Duerrfeld, the defendant represented by me, was not yet in Auschwitz in 1942 when Reichsfuehrer Himmler visited this camp. My client tells me, however, that the Reichsfuehrer SS was actually in 1943 in Auschwitz and that the picture in Document Book 74 depicts Himmler and the Senior Engineer, Faust. I believe that this satisfies the desires of the Prosecution.

THE PRESIDENT: Very well, the statements of counsel are on the record. You may proceed.

MR. MINSKOFF: Yes. If your Honors please, may that Exhibit 1457 be marked in evidence instead of for identification?

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THE PRESIDENT: Very well, the statements of counsel are on the record. You may proceed.

MR. MINSKOFF: Yes. If your Honors please, may that Exhibit 1457 be marked in evidence instead of for identification?

THE PRESIDENT: It is so ordered.

MR. MINSKOFF: In Book 75, Exhibit 11490, is the affidavit of Olga Longyel. With respect to this affidavit there was an objection raised as to irrelevant material contained therein and some material was stated to be incompetent. The Prosecution has spoken with Dr. Nelte of the defense and agreed upon certain deletions with respect to the affidavit which the Prosecution now has to make for the record.

On page 1 of the affidavit, the paragraph marked 4, the sentence to be deleted is: "For example, shortly after I arrived at Auschwitz I heard rumors to the effect that my young children and parents had been killed." On page 6 all but the first sentence is to be deleted -- of paragraph 6, that is, page 2.

Under paragraph 8 the sentence beginning "My husband told me", the following ten lines ending with "is certain," is to be deleted.

Paragraph 9 is to be deleted down to about the middle of the paragraph beginning with the sentence, "because my husband," -- that is, up to that point it is deleted. The following remains in.

Paragraph 10 is deleted in to. Paragraph 11, the first three and a half lines are to be omitted and then later in the same paragraph beginning with, "Several women I met" -- down to the balance of that paragraph is to be omitted. Paragraph 12 is to be omitted entirely. Paragraph 13, about the middle of the paragraph, the portion beginning, "The rumor," and ending with, "in their office," is to be omitted. The balance of the paragraph to be left intact.

Paragraph 15, the first three lines to be omitted. Paragraph 16, omit until the sentence beginning, "In the infirmary I met slave laborers, etc.", up to that point is to be omitted. Paragraph 17, the third sentence begins, "She told me", is to be omitted down to "if they would not work faster." The balance remains intact.

Paragraph 18 is deleted. Paragraphs 19, 20 and 21 are deleted. That's in conformity with the agreement with Dr. Nelte.

Book 76, which is the hospital book --

THE PRESIDENT: Are you starting, now, on a series of documents that you are going to offer to supplement Book 76?

MR. MINSKOFF: No, these are corrections —

THE PRESIDENT: Corrections. Very well, go ahead.

MR. MINSKOFF: — to the record. On Book 76, the index refers to two documents. One was 10186, which was the hospital book itself and then the second was 12116. That was an affidavit of Judge Sehn, certifying to the authenticity of the document of the hospital book. That wasn't offered in evidence; as your Honors will recall at the time the book was offered the witness on the stand, Mr. Rausch, identified it as his own handwriting and no further problem of authenticity of the document existed.

THE PRESIDENT: Now, what's the number of that document you wish not to offer?

MR. MINSKOFF: I don't care to offer it — I merely say that to avoid confusion. I don't really want NI-12116 is not offered and should be stricken from the index.

THE PRESIDENT: It is so ordered.

MR. MINSKOFF: Now, on book 79 I do wish to offer a document — that's NO-1257, as Prosecution Exhibit 1829. This may be added at the end of Book 79. It's a report from Pohl to Himmler accounting for the quantity of clothes secured from the Jewish victims of Auschwitz and Lublin. It may be noted that on the third page of the document I.G. Farben is one of the recipients of the clothing.

If your Honors will now turn to Book No. 84 —

THE PRESIDENT: At this time we will rise for our morning recess.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

MR. MINSKOFF: In Document Book 84, we'd like to note a change in Exhibit 307, on page 9 of the English and 15 of the German. That is NI-8004. In paragraph 4, the sentence "I was also given complete control" should read "chief management", by stipulation with Defense counsel. That change should also be noted in the index.

Now, if it please the Court, with respect to Prosecution Exhibit 1608, Document NO-265, the Ding Diary, that document is now in evidence except for the first page. The Prosecution wishes at this time to offer the underlying testimony of Dr. Kogen which formed the basis of the Tribunal's decision in the Medical case as to the admissibility of the Ding Diary in its entirety. The Prosecution now offers —

DR. EISENBLAETTER: Dr. Eisenblaetter, for —

THE PRESIDENT: Just a moment, counsel. Please let the Prosecution complete its offer and then we'll hear you.

MR. MINSKOFF: The Prosecution offers NI-12796 as its Exhibit 1830.

THE PRESIDENT: Now we shall be glad to hear the Defense counsel.

DR. EISENBLAETTER: Eisenblaetter, for the defendants Lautenschlaeger and Jashne. I am acting as the assistant of Dr. Pribilla, Dr. Nelte, whose client as well as our client Lautenschlaeger is implicated in the case of human experiments, objected in a number of cases against the submission of parts of documents. These parts of exhibits, as Mr. von Halle stated, are to be offered today. Dr. Nelte is on a business trip and is not present. He will come back sometime today and I should like to reserve the right for him to make his objections tomorrow and to reserve a final decision of the Tribunal until such time.

THE PRESIDENT: That request will be granted. It is in line with the understanding we had at the beginning of the session this morning. However, it might be well, Counsel, to call the attention of your associates to the former ruling of this Tribunal. It is to the effect

that the Prosecution or Defense may offer such pertinent parts of a document as they consider to have probative value from their standpoint; but that when they do that and when the remaining parts of the document are available, the door is then open to the other side to offer such additional parts or all of the document if they likewise consider that it is important from their standpoint. But your associates may make such further representations as they see fit with respect to the matter when they return.

MR. MINSKOFF: May I state, just to clarify the record, that what was offered is a complete document, called the Ding Diary, and the reason that it is now mentioned is that one page was excluded before. Shall we mark 1830 for identification, pending the objection, instead of in evidence; or is that to be marked in evidence?

THE PRESIDENT: We suggest that you let it go in in evidence and then if there is no further objection it will not be necessary to refer to it again. If there is an objection, we will hear counsel for the Defense. Document NI-12796 is now in evidence as Prosecution Exhibit 1830.

MR. MINSKOFF: And together with that, if it please the Court, the Prosecution would like to mark for identification NI-12609 which will be 1831 for identification, merely for the convenience of the Court, since we shall ask the Court to take judicial notice of that document, which is an excerpt from the decision of the Military Tribunal I.

THE PRESIDENT: Very well.

MR. MINSKOFF: With respect to Prosecution Exhibit 1630, the affidavit of Dietsch, and 1631 the affidavit of Kogon, it will be recalled that the Tribunal requested that to the extent possible we agree with counsel for the Defense as to portions which might be stricken as irrelevant or immaterial. At this time the Prosecution agrees with respect to 1630 to strike the following portions. Paragraph 2, the second sentence, which reads, "I presume the experiments with I. G. drugs on prisoners were arranged by verbal agreement with the I. G." Paragraph

5, the second subparagraph, will be omitted, beginning "As far as I remember." Paragraph 8, the portion of the sentence in the second subparagraph which reads "Only in a concentration camp it is possible to carry out experiments with drugs with such poor tolerance." Paragraph 11, all of the paragraph with the exception of the last sentence. Paragraph 13, all of the paragraph. With respect to other portions of the affidavit, the Prosecution is of the opinion that these portions are relevant, material, and competent, and that the statements of the affiant concerning his own activities and concerning conversations relating to those activities with his official superior in the course of his work and dealing with the work, and the persons for whom the work was being done, are all germane to the issue before this Court.

With respect to Prosecution Exhibit 1631, the Prosecution agrees to strike from the document all reference to experiments other than typhus, or spotted fever as it is referred to in the affidavit, and other than the experiments conducted to determine a suitable means of infection. Also, paragraphs 13, 14, 15, 16, 17, 18, 20, 21, and 22, may be stricken as dealing with other types of experiments.

We pass to Book 37.

Document NI 12454 was marked, for identification, as Prosecution's Exhibit, for identification, 1691. The prosecution now offers in its stead NI 12454A as Prosecution's Exhibit 1832.

Now, with respect to Prosecution's Exhibits 1715, 1716, and 1717, which are now in evidence, the Prosecution wants the record to show that these exhibits are protocols of minutes which were offered in lieu of affidavits, and that when the waiver of these affidavits was made, it was with the knowledge of the nature of the documents.

The only other comment that the Prosecution would like to make at this time is that it had promised it would offer the documents referred to in these exhibits, as soon as it came to the Prosecution's hand. It has done so with respect to the documents referred to in the Faikel affidavit, Exhibit 1716, and it will do so in respect to the documents referred to in the Tondos affidavit, 1715, as soon as it is able to do so.

Now, that is all for the document books as such, Your Honors.

Pardon me. Two further questions.

With respect to the same document book, the Prosecution would like to offer two documents. One is the affidavit of Afrine, which appeared in Book 75 and in connection with which we struck off that portion which dealt with medical experiments and retained only the portion dealing with Auschwitz. At this time, if it please the Court, we would like to offer in evidence the balance of that document, which was Prosecution's Exhibit 1465. That was NI 7184. The Prosecution now offers the balance of that document in evidence and, for the convenience of the Court, suggests that it be kept in the Book 38, together with medical experiments.

THE PRESIDENT: Now, for the sake of the record. You have reference now to Document NI 7184?

MR. MINSKOFF: That is right, Your Honor.

THE PRESIDENT: Is it to be treated as part of Exhibit 1465 or

do you desire to give it an additional number?

MR. MINSKOFF: It can be treated as part of Exhibit 1465. I merely mentioned that, for the convenience of the Court, the extra copy might be kept in Book 88 with medical experiments.

JUDGE HERBERT: Mr. Prosecutor, do I understand that you are now offering page 9, the part that was not previously offered?

MR. MINSKOFF: That is right, Your Honor. That is the portion that deals with the five letters.

THE PRESIDENT: Very well.

MR. MINSKOFF: In that connection, the Prosecution also offers NI 12789 as its Exhibit 1833 and that should also go in Book 88, together with this Afrine document.

There are no other additions or corrections to the books.

DR. EISENBLAETTER (Defense Counsel for defendant Lautenschlaeger): I should like to point out that the last Exhibits, 1830 to 1833, have not been given to the Defense within twenty-four hours. Therefore, I ask to reserve the right to make objections later.

THE PRESIDENT: We have that very definite understanding. There seems to be some doubt about the filing of some of these documents and we are leaving the door open to counsel for the Defense to make objections later if they find them improper.

MR. MINSKOFF: At this time, if it please the Court, there are a few corrections to the transcript that we would like to note on the record.

On page 3827, instead of Exhibit 1467 it should be 1472.

On page 3883, instead of Exhibit 1401 it should be Exhibit 1501.

On page 3885, instead of NI 109408 it should be NI 10948.

On page 3886, instead of Exhibit 1411 it should be Exhibit 1511.

On page 3953, instead of NI 10928 it should be NI 10927.

On page 3954, instead of 18807 NI, it should be NI 9807.

On page 4319, instead of Kopon the name should be Kogon.

And on page 4349, NI 12445, which appears as Exhibit 1707, should

be NI 12446, as Exhibit 1707.

That is all.

THE PRESIDENT: These corrections will be ordered on the record, unless there is objection and there is no objection at this time.

MR. SPRECHER: Mr. President and Members of the Tribunal, in connection with the evidence principally submitted in connection with Count IV we would like to introduce but one document at this time. It is NO 5637 which may go in as Prosecution Exhibit 1834. The certificate on this document notes that these are file notes of Himmler in his own handwriting. We ask Your Honors' attention to the first entry which concerns the Circle of Friends and with respect to a meeting held on the 12th of December 1943. It indicates the topics that Himmler discussed before the Circle of Friends, including, one, the security situation with respect to foreign workers and, two, Himmler's tasks as Minister of Interior. He had just received that assignment in addition to his other tasks, as Your Honors will recall from the earlier presentation, as well as from the IMT Judgment.

DR. FLAEBCHNER (Defense Counsel for defendant Buetafisch): Mr. President, in contrast to the Prosecutor, I do not see any indication that this document consists of handwritten notes by Himmler. There is a certificate here that says that Mr. Rolf C. Schneider of Evidence Division, Office Chief of Counsel, certifies that the attached document consists of four photostat pages, designated NO 5637, consisting of file notes of Himmler of December, 1944, and is a true copy. It is certified that this document is a true copy.

THE PRESIDENT: Now Counsel —

DR. FLAEBCHNER: But this man cannot certify that these are file notes of Mr. Himmler, and from this certificate I do not see that. The document itself does not show either that these are file notes of Mr. Himmler. It is not on his official stationery and the thing isn't signed, nor can one identify it as Himmler's handwriting, or in any other way it has not been identified. I object to the assertion that this is a

file note of Himmler's.

THE PRESIDENT: Counsel, it is no use wasting much time on this. If the only controversy is whether it is in Himmler's handwriting, just save the time. The Tribunal is unconcerned about that. If the document is basically competent in evidence, that is sufficient, and the remarks of the Prosecution will be disregarded as to whether or not it is the handwriting of Himmler. It is a very small circumstance and means nothing to us.

MR. SPRECHER: Would Your Honors like to see the certificate at the moment since the question has been raised?

THE PRESIDENT: The objection didn't go to the competency or the admissibility of the document. We take it the objection was to your remark as to whose handwriting it was in. That is not a matter of any importance here. It's from the files of his office. That's all we are concerned about.

MR. SPRECHER: If it please the Tribunal, the Prosecution is now ready to rest its case-in-chief, subject to certain specific reservations.

THE PRESIDENT: Now, Mr. Prosecutor, will you please state, in the presence of counsel for the defense, for the record your reservations and counsel for the defense will take notice of those reservations and the Tribunal will do likewise, so that we may have no confusion or uncertainty as to the Prosecution's rights after it has formally rested here now.

MR. SPEECHER: Firstly, there are the questions arising out of the announcement of the Tribunal, on last Wednesday, 26th of November 1947, with respect to the taking of testimony before a Commissioner, with respect to those affiants who still offer outstanding problems of one kind or another.

Secondly, there are a number of matters arising out of the affidavits, where the defense has stated that it believes stipulations are possible. If stipulation is not arrived at in those cases where the defense has so indicated, then, of course, taking of evidence before the Commissioner would also be necessary. I think these refer principally to the documentary affidavits, so-called, concerning participations, percentages, production figures, profit and loss statements, etc. I think partly the delay has been occasioned because the defense wanted to have these newly authorized assistants undertake some of that work. Your Honors.

Thirdly, under Count II, we are still awaiting two affidavits from Vienne which are in the nature of certifications concerning two documents presently marked only for identification, namely, Exhibit 1079, NI-11259, and Exhibit 1086, Document NI-738¹. We shall forward these affidavits, certifying the two prior exhibits for identification, to the Tribunal and to the Defense Center, as soon as we receive them and, at the same time, we shall formally offer them in evidence as the Prosecution Exhibits next in order. If the defense wants to submit interrogatories to these two affiants or to examine them, that matter too can be taken up with the Commissioner.

The Tribunal's attention is drawn to the fact that Prosecution Exhibit 591, that is NI-6239, an interrogation or affidavit of the defendant Kugler, has still not been admitted in evidence because the defense raised an objection to that document which has not been passed upon by the Tribunal.

This morning, the Prosecution filed copies with the Secretary General and Your Honors and Defense Counsel with respect to two affidavits of deceased affiants. If Your Honors should grant our motion in that connection, we would like to reserve the right to offer other affidavits of deceased affiants which are already in the document books. That is to say, if you should grant our motion, we might decide to offer in evidence some of the affidavits....

Mr. Dubois points out to me that the two documents have been offered and rejected. Of course, that refers to Prosecution Exhibits 1291 and 1293. After Your Honors made your ruling, we did not offer a number of other affidavits of deceased affiants which have appeared in the books.

THE PRESIDENT: Then your reservation would go - in the event the Tribunal should reverse its ruling and hold that these affidavits are competent - would go to the two where the specific subject of the objection is, to wit, 1291 and 1293, and to the right to offer the affidavits of deceased persons in addition to that in those cases where the affidavits are in the books that have been presented to the Tribunal. Is that right?

MR. DUBOIS: As I understand it, the right to reoffer the two that have been rejected and the right to reoffer those that are in the books.

THE PRESIDENT: Yes. We understand your situation.

MR. SPEECHER: Mr. President, it was just pointed out to me that I referred to the Kugler interrogation which was outstanding as Prosecution Exhibit 591 or NI-6239. That was an error. The Kugler interrogation was Prosecution Exhibit 1015, NI-11204. The other document I

mentioned, Prosecution Exhibit 591, is already in evidence and it is a chart on explosives.

Now, in a number of cases, some questions of authentication concerning documents have come up and if the Prosecution should receive better evidence with respect to the documents already in evidence, such as receiving a copy which had a signature where previously we had a copy that did not have a signature, we would like the right to point out that at whatever stage of the proceedings we are in so that the best evidence could be before Your Honors and so that the defense, perhaps, would have fewer questions during the defense's case concerning such matters as that.

We will submit further motions to correct errors in the transcript, but in a case of this scope, where so many of the documents are translations, we would like to make a general motion to conform minor errors in the formal papers and in the transcript, whether the Prosecution was speaking or whether the defense was speaking, to the proof, with respect to transposition errors, typographical errors and translation errors. Of course, not meaning, in any way, to make any motion with respect to substantive changes.

Then tomorrow, Your Honors, in view of what you said this morning, we would plan on putting before you the affiant Ohlenborg at the morning session, and, if the witness Orlik, Dr. Orlik, who was scheduled to arrive today but did not, has arrived by tomorrow morning, we would also like to put him on.

Then, if it please the Tribunal, we would like to mention on the record the Prosecution's understanding so far as affiants with respect to whom there are still some outstanding problem of some kind. The Prosecution will set up a fourth memorandum concerning affiants in the next several days for the use of the Tribunal, the Commissioners, and the Defense. The first list of affiants that I shall read are affiants whose names appear on the third memorandum and with respect to whom

there are still outstanding problems, and then I shall read a short list on those who do not appear on that third memorandum. On the third memorandum, there are outstanding problems with respect to the following affiants:

THE PRESIDENT: Pardon me. By your expression "outstanding problem" do you mean to indicate the possibility of cross examination?

MR. SPEECHER: As well as stipulation or cross-interrogatories or, in some cases, I think, waiver.....

THE PRESIDENT: Yes. Very well.

MR. SPEECHER: Because some of the affiants I shall mention have only certified concerning records or excerpts from documents or things like that.

William Allen

Erl Amend

Rene Balandier

Willi Davis

Arthur Dietsch

Gunther Frank-Wegle

Kurt Hauptmann

Otto Hauch

Adolf Hoshle

Josef Kerynk

Waldemar Hoven

Walter Jacobi

Josef Jacobic

Josef Johan

Francisek Kopyreck

Franz Klecksa

Salomon Koln

Kurt Krueger

Olga Lengyel, unless, Your Honors, the stipulation which was made this

morning was satisfactory to Dr. Helte so far as waiver of cross examination is concerned, and since Dr. Helte is not here, I am not advised of that.

Walter Loebner

Guenther Lotsmann

Jiri Marek

Rudolf Marek

Jean van Nal

Nyiazli Nikolas

Otto Ohlendorf, whom we may hear tomorrow.

Dr. Erich Orlitz, whom we may also hear tomorrow

Herbert Rosenberg

Frenz Rothenberg

Hermann Ruther

Gustav Schlotterer

Heinrich Schuster

Albert Speer

Leon Staischek

Hoack Treister

Karl Wolff

Alfred Zann

Moses Zlotolow

That's the last of those who appear on the third memorandum and the following eight do not appear.

The following nine affiants have come up in recent days and do not appear on that other memorandum:

1. Dr. Bandal

2. Perry Broad

3. Elmann, once more

4. Alfred Elbau

5. Paul Hoeni, both of the last two are merely certifications concerning other record.

6. Mrugowsky, who is under sentence.

7. Hans Muenach. With respect to him I would like to say that the Prosecution inadvertently omitted him from one of the earlier lists and that is with respect to Muenach's affidavit, Exhibit 840, VI-10923, which is found in Book 46, page 1119. Perhaps the defense indicated something about waiver at the time, but I could find no formal record of it, so I am mentioning it now.

Gerhard Ritter, and the affidavit of N. Dowind, the affidavit introduced this morning.

THE PRESIDENT: Now the Tribunal did have in mind making a statement on the transcript of the assignment of these witnesses to the Commissioners in those cases where cross examination is necessary and proper. However, in view of the fact that it is yet possible that there may be some waivers of cross examination, some stipulation between the Prosecution and the Defense which would dispense with the cross examination, or some resort to interrogatory or cross affidavits on the part of the defendants which would likewise dispense with the cross examination, it would perhaps be better, following the adjournment tomorrow, as soon as the Prosecution can prepare an accurate list and as soon as Counsel for the Defense can go over the list and indicate their desires with respect to cross examination, for us to enter a formal order making the assignment to the Commissioner. That order, of course, will be filed in the office of the Secretary General and will be distributed to Counsel in due course. We think that is necessary not only for our own record but for the information of the Commissioner.

I may say in that connection further that insofar as Counsel for the Defense can reach the conclusion that the cross examination of one or more of these witnesses will not be necessary, it will make for orderly procedure if you will reach that conclusion as promptly as possible, because the list to which we shall certify the names to the Commissioner will, of course, be subject to subsequent waiver, but it will simplify matters if he and the Tribunal Counsel understand just what his responsibilities are with reference to conducting the cross examination. So, Mr. Prosecutor, will you see that there is a list given to the Tribunal and to Counsel for the Defense? And we shall have to ask you for very prompt consideration of it; otherwise we will issue the order as to all names that appear on the list and where there has been no other disposition made.

MR. SPECHLER: Yes, Mr. President. Then subject to the reservations stated, the Prosecution rests its case-in-chief.

THE PRESIDENT: Now those reservations are sufficiently clear on the record, but there are two things I should like to mention. As we understand the state of the record, there are now two pending matters before the Tribunal. One is with respect to the objection of the Defense to the Prosecution's Exhibit 1015, the Kugler affidavit, with respect to which we have not yet ruled. The other is the ruling on the motion for reconsideration of the ruling of the Tribunal with regard to the deceased affiants. Those matters we shall undertake to dispose of very promptly so that Counsel will know what they are to meet in that regard.

I believe also that -- I am not sure that it was on the record or whether it was the result of an informal conference -- the Tribunal indicated that it would rule before adjournment in regard to the matter of the cross examination of defendants whose affidavits are in evidence. So those three matters are in the bosom of the Tribunal, and we shall advise you about them before we formally recess for the opening statements.

Anything further from the Prosecution?

MR. SPRECHER: Nothing, Mr. President.

THE PRESIDENT: Then we will take up this afternoon the cross examination of the witnesses who are available for that purpose.

MR. SPRECHER: Was that to be this afternoon? I understood tomorrow morning.

THE PRESIDENT: Did you say tomorrow morning? I am advised that you are correct.

The Tribunal will now rise until nine-thirty tomorrow morning.

(The Tribunal adjourned until 0930 hours, 2 December 1947.)

OFFICIAL TRANSCRIPT OF MILITARY TRIBUNAL VI, CASE VI, IN THE MATTER OF THE UNITED STATES OF AMERICA, AGAINST KARL KRAUCH, et al, DEFENDANTS, SITTING AT NURNBERG, GERMANY, on DECEMBER 2, 1947, JUSTICE SHAKE PRESIDING.

THE MARSHAL: Persons in the Courtroom will please find their seats.

The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United States of America, and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, will you ascertain if all of the defendants are present in the Courtroom?

THE MARSHAL: May it please your Honor, all of the defendants are present in the Courtroom.

THE PRESIDENT: Are there any preliminary announcements from the Prosecution?

MR. SPRECHER: None, Mr. President.

THE PRESIDENT: Anything from the Defense?

DR. BOETTCHER: No, Mr. President.

DR. SEIDEL, Counsel for the defendant Duerrfeld: Mr. President, Your Honors, I gathered from what Mr. Sprecher said yesterday, that the Prosecution has made written application to have the affidavits of deceased witnesses admitted into evidence. As I have heard, this application is available only in English, and therefore I am not able to comment on this application in detail. I should merely like to make two brief remarks.

When the Prosecution offered affidavits of deceased witnesses a few weeks ago, the Defense objected. The Defense explained their objection in detail, and the Court sustained the objection. By way of explanation of this ruling the Tribunal made a very clear and definite statement. Therefore, I can see no compelling reason why this ruling of the Tribunal should be changed.



I should like to point out two facts which in my opinion are against a revising of this ruling. One is the impression given by the cross-examination of various witnesses, and above all, the cross-examination of the witness Oswald Pohl. I am of the opinion that nothing has happened since this ruling of the Tribunal, which would indicate the necessity of changing this ruling.

I have the impression that a great deal has happened since then, which would justify the decision that the ruling of the Tribunal should be confirmed and upheld. The right of cross-examination is a basic right of every defendant. I need not repeat that after the examination of the witness Oswald Pohl by the Prosecution, and after cross-examination by the Defense, not much was left of the affidavit.

I should like to point out one more thing, however. If the Prosecution attempts anew to introduce affidavits of deceased persons into evidence in this trial, they are thinking primarily of three affidavits, those of the witnesses Sauckel, Entreas, and above all, the affidavit of the former commander of Auschwitz, Rudolf Hoess.

I must object to the latter affidavit, not only because the witness has died in the meantime, but I also must present a statement of affairs to the Court which speaks against the admissibility of this affidavit, NI 034.

I have in my hand an affidavit of SS Obergruppenfuehrer, Earl Wolff commenting on the contents of the Hoess affidavit. The affidavit of Rudolf Hoess states, among other things, that in the spring of 1941, together with the Reichsfuehrer-SS, Obergruppenfuehrer Wolff—

MR. SPRECHER: Mr. President, I do not think this is a question which can be assisted by Defense counsel before

Your Honor has ruled on the question of the admissibility of attempting to show something which might run against the weight of the affidavit.

We have indeed stated in our arguments, both orally and in the motion, that that is indeed one of the resources upon which counsel for the Defense can call with respect to the weight to be given to the affidavit of the deceased person, and also in combating the facts or declarations made by the deceased affiants, but it scarcely seems to us under any theory, that it can be considered in connection with the question of the admissibility of those affidavits.

THE PRESIDENT: The Tribunal would like to say to counsel for the Defense and for the Prosecution that it expects to dispose of this matter today. It would suit our convenience better, however, if we might make it a special order of business for one-thirty. At that time we will take the matter up, and if there is any occasion, the Tribunal would like to be further advised with reference to the views of counsel. We will give you an opportunity at that time. Is that satisfactory?

MR. SPRECHER: Yes, Your Honor.

THE PRESIDENT: The Tribunal has several things under advisement, some of which we should like to dispose of at this time.

One question was propounded to--did you wish to say something first, Doctor?

DR. NELTE: Yes, Mr. President.

THE PRESIDENT: Let the record show Dr. Nelte is now addressing the Tribunal.

DR. NELTE: I beg your pardon for not having been able to be present yesterday. I was on my way back to Murnberg and was prevented from arriving in time. I did not arrive

until last night. I asked the Prosecution, that is the office of Mr. Sprecher, to postpone any questions still pending until Tuesday, that is to say, until today, but apparently it was not possible for the Prosecution to fulfill this request and yesterday, when I was not here, they brought up various matters for discussion, which made my presence necessary.

First of all, would the Tribunal please tell me whether they have my letters of the 26th of November, 1947. On that date I handed in letters for the information of the Tribunal and the Prosecution, with respect to the affidavit of Hoven, the affidavit of Dietzsch and the first page of the Ding diary, in which, to help the Tribunal and to save time, I mentioned those passages in the affidavit which, in my opinion, were irrelevant and inadmissible.

I sent the same letters and the same affidavits with my remarks to the Prosecution. May I ask, Mr. President, whether you have these letters, - whether you received them?

THE PRESIDENT: I should hesitate to assert that we did not receive them. I can only say that I have no memory of it, but I have a good many papers on my desk. I have no recollection of having any such documents come to my attention.

MR. SPRECHER: Mr. President, may I say this. I am quite troubled, by what I am sure are the good intentions of counsel for the Defense, in some instances. But notwithstanding, good intentions which cause an unconscionable amount of confusion which personally, at least the Prosecution with its staff, is in no position longer to suffer. We get motions, and we get letters, and we get notes, which come from the Tribunal, or which come from individual Defense counsel, and which violate every rule of procedure which has been adopted

in Nurnberg and followed in the other Tribunals, and Defense counsel expect that I am supposed to know what they have privately passed to either the Tribunal, or to some member of the Tribunal, or to some member of the Prosecution's staff.

Now we just do not have a clearing office that can take care of those types of irregularities. If these motions are filed in the regular way, I can be responsible for them, as a representative of the Prosecution who handles procedural matters. If they are filed in other ways, I cannot be so responsible. That is Point I.

Now, Point II, if a lot of letters, which are not in the nature of motions or applications, are being passed around, with the intent that those memorandums of whatever nature they may be, shall have some legal effect, then the Prosecution is put in a very strange position and does not know what the formal papers in this case are.

THE PRESIDENT: Gentlemen, there is no use in taking the time of the Tribunal to discuss that matter. The Tribunal has indicated, and now reasserts, that we do expect anything that is filed in the way of documents, petitions or communications for the attention of the Tribunal, to go through regular channels.

The President has repeatedly returned papers to counsel that have been left at his office or delivered in his absence and suggested that they go through regular channels, and then we have less confusion.

Now as to the substantive matter that Dr. Nolte is speaking about, is it possible, gentlemen, for you two to reconcile your differences? We well recall that Dr. Nolte was not present yesterday and certainly no advantage is going to be taken of his absence with respect to the records that were

made on yesterday. If you can agree as to the proper procedure, we will ratify the agreement. If you cannot, we will attempt to reconcile it.

I only suggest in the interest of time that you undertake at the recess to see what the situation is, and then advise us.

MR. SPRECHER: Mr. President, I think I can save the Tribunal any questions about the matter. With respect to one of the affidavits, there was a stipulation, and Mr. Minskoff so indicated yesterday. With respect to the other affidavits, there was no agreement, Mr. Minskoff believing that apart from certain portions which he on his own motion struck yesterday, and read into the record, that there was not only disagreement on facts, but such basic disagreement on the weight which might be given to some of the other evidence that he thought his agreeing to its being stricken would only mislead the Defense further, with respect to such point as whether or not experts like Hoven who in their own field certainly were experts, can give certain types of opinion evidence, which have great weight.

We indeed think they may, and therefore, we did not want to agree to any striking with respect to those affidavits, and will not agree to any.

MR. PRESIDENT: May I suggest, Dr. Nelte, that between now and one-thirty you consult with Mr. Sprecher. If there are any situations that have arisen that are embarrassing to counsel for the defense because of his absence. We shall take that matter up at one-thirty, and see that an opportunity to present his views on the subject. It is possible that conference in the meantime may eliminate a part or all of the misunderstanding.

Is that agreeable, Dr. Nelte?

DR. NELTE: I am quite willing to be present to negotiate with Mr. Sprecher once more about these things, but since the Prosecution had an opportunity yesterday to express their opinion in the Court, I should merely like to say what it is my duty to say in the interests of the Defense. If the translation was correct just now, Mr. Sprecher said that in spite of good intentions I caused confusion.

I believe that in what I have done, my only interest has been in trying to see if a possibility existed to bring clarity into unclear situations, and I have been quite willing to negotiate directly with the Prosecution.

In the case of Hoven and Dietzsch, the Prosecution told me that such an understanding was not possible for very basic reasons. Therefore, I am interested only in determining whether the Tribunal has saved my letter and the affidavits with the notes, in order to obviate the necessity of reading all of the objectionable passages in open Court.

If I am sure that the Tribunal has received my letter and these affidavits then I am convinced that the Tribunal will come to the right decision regarding relevance and irrelevance.

The matter of the Lengyel affidavit has been settled by mutual agreement, and as I hear, this matter was reported to the Tribunal yesterday.

But before one-thirty I will talk to Mr. Sprecher once more, to discuss the main matters, that is, Hoven and Dietzsch affidavits,

and the Kogon affidavit.

THE PRESIDENT: With reference, Doctor, to the document you refer to, that was addressed to the Tribunal, I can only say again that I have no independent recollection of ever having seen such a document.

I shall check my own desk at the 11 o'clock recess, and report to you personally before we reconvene at 11:15, and we shall pass this matter in the meantime until one-thirty, so that you may have an opportunity to confer with counsel for the Prosecution.

If there are any differences or misunderstandings, we will undertake to resolve them. Now let's don't discuss this any further, gentlemen. If, you have something else to say on some other subject we will listen to you, but this matter is now closed until one-thirty.

DR. HELTZ: I have a question. In the Afrine affidavit there were five letters mentioned. When the affidavit was put in evidence those five letters were passed and were not accepted. I understand that yesterday the Prosecution offered this entire Afrine affidavit, and I should like to know whether this was done without reservation or whether I was reserved the right to object.

THE PRESIDENT: It is the recollection of the chair that the letters referred to were admitted into evidence, but there was a specific reservation on the part of the Tribunal, that the documents offered on yesterday were nevertheless subject to subsequent objection on the part of counsel for the Defense.

Dr. HELTZ: Then, Mr. President, I may say a few words on this subject?

THE PRESIDENT: We would prefer, Dr. Helts, as long as we can get along with our regular routine, if you would pass that also until one-thirty because we do not have the document books, here and we will afford you an opportunity to present your views at the same time, immediately after the noon recess.

DR. HELTZ: Then I should like to ask for the same provision of getting the first page of the Ding Diary.

THE PRESIDENT: That is true, that is the situation with reference to all of the documents offered on yesterday during your absence.

DR. KETTL: Thank you.

THE PRESIDENT: One of the matters that the Tribunal has had under consideration relates to some interrogations that were propounded by counsel for the Defense concerning the matters of cross-examination of defendants whose affidavits have been introduced in evidence by the Prosecution.

We are now stating for the record the view of the Tribunal on that subject.

A Number of affidavits, given by various defendants, have been introduced in evidence as a part of the Prosecution's case in chief. These affidavits were admitted by the Tribunal upon the theory that at least against the makers they constituted admissions of the individual who made them. These affidavits also contain statements involving defendants other than the makers.

This Tribunal has previously ruled that the broad, general principle that a defendant is entitled to interrogate those who testify against him is applicable in this trial. According to this principle, a defendant against whom evidence is presented in the form of an affidavit of another defendant, is entitled to interrogate the maker of the affidavit.

The Tribunal is also mindful of another principle of fundamental right which is that a defendant may not be compelled to take the witness stand against his will, and thus risk becoming a witness against himself.

It therefore becomes our duty to resolve and apply the two principles that we have just stated with respect to the cross-examination of one defendant who has given an affidavit containing evidence against a co-defendant.

As to this matter we have reached the following conclusion:

One defendant has no right to call another defendant to the witness stand over the latter's objection. If a defendant voluntarily takes the witness stand, he thus becomes a witness for all purposes, and he may be cross-examined by the prosecution. If the defendant on the stand has given an affidavit that has been introduced by the prosecution, which contains evidence against another defendant, the latter may cross-examine him within the scope of the matters set forth in the affidavit, which are adverse to the defendant in whose behalf the cross-examination.

If the Prosecution has introduced in evidence the affidavit of a defendant who does not take witness stand and thus does not become subject to interrogation by other defendants, the Tribunal, upon proper motion, will enter upon the record an order to the effect that the affidavit, will not be considerable as evidence against defendants other than the affiants.

The Tribunal has also under consideration, a motion of defense counsel to reconsider the matter of the future trial schedule of this case, and we now state for the record, our views on that subject.

On 20 November, 1947, the Prosecution indicated to the Tribunal in open court, that it would rest its case in chief with certain reservations, on or before December 3, 1947. The Tribunal announced that when the Prosecution had rested, it would until 18-19 of December, 1947 to hear the opening statements of the Defense, and that upon the contemplation of said opening statement it would again recess until 12 January, 1948. The defense has objected to this schedule, upon the ground that it does not provide sufficient time for the preparation of the case of the defendants. The Tribunal now makes the following statement with respect thereto.

The indictment in this case was filed on the 5th of May, 1947. And the Marshal completed the service of the indictment on the defendants on the 7th of July, 1947. The defendants were arraigned on the 14th of August, 1947, and the opening statement of the Prosecution was heard on

the 27th of August 1947. The trial has been in progress since the last mentioned date, but there have been frequent recesses, so that only 53 actual days have been consumed in the course of the trial.

For the most part the Tribunal has been in session for a four-day week. This arrangement was made at the request of counsel for the defendants in order to provide them with more time for preparation. The Tribunal fully realizes the magnitude of this case, and the burdens that rest upon counsel for the defendants. Keeping in mind, however the positive obligations imposed by Article 6 of Military Government Ordinance No. 7, that the trial shall be confined to an expeditious hearing of the issues, and that strict measures shall be taken to prevent any unreasonable delay, the Tribunal feels that it is in no position to make concessions with respect to the presentation of the Defense.

The Tribunal deems it proper to state also, that each of the defendants is represented by a chief and an assistant; that the Tribunal has approved the appointment of an administrative aid to the Defense counsel, that it has appointed an expert and an assistant in the field of International Law for the Defense, and that it has also approved the appointment of eight special counsel and assistants to aid the Defense in the preparation of the case.

Under the circumstances, the Tribunal would not be justified in approving any further delay in the trial of this cause, and the motion is overruled.

The Tribunal has also had under advisement a motion on behalf of the defendant Kugler objecting to the introduction in evidence of Document NI-11204, which is marked for identification as Prosecution Exhibit 1015. The Tribunal deems it sufficient to say in that regard, that, treating the facts set forth in the written motion as undisputed, the conclusion is inescapable nevertheless, that as a matter of law, there has been no showing of duress and coercion upon this defendant sufficient to warrant the rejection of the exhibit. The objections to the exhibit which has been marked for identification as Prosecution Exhibit 1015 are now over-ruled by the Tribunal and the Exhibit is received in evidence. The Tribunal will at 1:30 or, as soon thereafter as the matter can be reached, dispose of the motion of the Prosecution for the re-consideration of the matter to which Dr. Nelte referred or to which defense counsel referred, rather, a little while ago. There is just one further matter of an administrative nature that the President feels obligated to call to the attention of counsel for the defense. Under date of 1 December 1947 we had a letter from the Director of the Language Division of these Tribunals calling attention to the fact that no documents have been received by that agency for translation and processing from the defense in this case. We feel justified, gentlemen, in saying to you that it does take some time to process documents, and that we do not expect the trial of this case to be delayed by reason of your failure to present your documents to the proper agency in time sufficient to be processed and made available for the use of this Tribunal. The Prosecution may proceed with the presentation of its evidence.

DR. NELTE: Mr. President, the announcements which you have just made which contain certain reproaches against the defense, I do not want to leave unanswered because it isn't true. In the discussion in chambers I pointed out to the

Tribunal that on 17 November immediately upon it becoming known that the Language Division did not have enough work I immediately handed in 25 documents in my case. After five days these documents were sent back to me with the remark that the Language Division had no intention of accepting loose documents but that this division could do its work only if the documents were handed in in complete books. Mr President, you know that the preparation of the defense cannot be done systematically but that defense counsel are forced in the course of months to work on various fields and to obtain documents, affidavits, etc., and that these documents can be put in order only when all the documents are present. Therefore, I do not think it is right if the Language Division refused to do the work which could be done at this time already for such a formal reason and, therefore, force us to hand our documents in for translation only when we have finished our work, so to speak.

THE PRESIDENT: I am very glad to know of the fact that defense counsel have taken steps to have their documents processed. The President is not informed of the administrative problems of processing documents but, between now and noon, we will contact the Director of that department and learn whether or not it is necessary and, if so, for what reason it is necessary that your documents be put in book form and we will see that you get that information and such co-operation as the Tribunal can give you, to get the processing of your documents under way. We do not say that as a matter of reproach but we are concerned that we do not find ourselves very soon in trouble because of the delay in the processing of documents. We will give you all of the co-operation, Dr. Nelte, that we can in getting that matter to work smoothly and the President will be personally responsible to give you a report on it.

MR. SPRECHER: Mr. President, please allow me one

remark because I don't like to have the record to stand as it would? I intended no reproach against Dr. Nelte and I want him and the rest of defense counsel to know that. The only thing is, we don't receive copies of their motions. I commend Dr. Nelte for the other things he has done in working with us.

THE PRESIDENT: Well, It's certainly sure that no one has suffered any hurt feeling over this matter. The problem that the Tribunal has -- as the presiding official of the Tribunal has -- that when these documents reach us in an informal way and finally we make some disposition and it gets on the record. We have very much annoyance from the archives, who are responsible for the keeping of the permanent records of this Tribunal because the documents are not cleared in the usual way and it does impose very considerable labor and burden on our office in order to go back and find those documents and make copies of them. So that will be solved, gentlemen, if you will bear in mind that whenever you have a communication of any kind for the consideration of the Tribunal or the other side if you will file it in the Defense Center and let it be translated and come through the regular channels it will be very much more satisfactory to all concerned and I think, in most instances, will result in more prompt action on the part of the Tribunal. Thank you, very much.

MR. SPRECHER: The Prosecution then calls Otto Ohlen-
dorf, Mr. President.

THE PRESIDENT: What's his nationality, please?

MR. SPRECHER: German. He is being tried before another Tribunal at the present time.

OTTO CHLENDORF, a witness, took the stand and testified as follows:

THE PRESIDENT: The witness will remain standing for the purpose of being sworn, raise his right hand, say "I", and

state his name.

THE WITNESS: I, Otto Ohlendorf.

THE PRESIDENT: And now please repeat after me. I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing. (The witness repeated the oath). The witness may be seated. May I assume that, Mr. Witness, that you are familiar with the signal lights that are on the witness stand and know of their purpose?

THE WITNESS: Yes.

THE PRESIDENT: And I also remind you, please, to speak to the point and as briefly as possible. Remember always, if your answers are not sufficiently full, counsel is privileged to ask you further questions. Thank you. The witness is with the Prosecution.

DIRECT EXAMINATION

BY MR. SPRECHER:

Q. Mr. Ohlendorf, will you state your full name once more for the record?

A. Otto Ohlendorf.

Q. And you have been under arrest since the collapse of Germany in 1945?

A. Yes.

Q. Mr. Ohlendorf, the Tribunal, the defense counsel and the Prosecution have copies before them of your affidavit which you gave before Mr. Schonfeld on 17 November 1947. Do you have a copy of that document before you in the German language?

A. Yes.

Q. Was that affidavit drawn up after you had been interrogated by Mr. Schonfeld on, approximately, 25 October 1947?

A. Yes.

Q. At this time, after reconsidering your affidavit, which is our Prosecution Exhibit 1599, do you have any additions or corrections to make in that affidavit which you consider important in order to get a full picture of the truth to the Tribunal?

A. I testified according to the best of my knowledge and belief and there's nothing I have to add.

MR. SPRECHER: No further questions.

THE PRESIDENT: The witness is with the defense for cross examination.

CROSS EXAMINATION

BY DR. HOFFMANN:

Q. Hoffmann (for the Defendant von der Heyde). Witness, I want to question you on the same affidavit that you have before you. First of all, I should like to clarify the question of when you held these various positions which you mentioned in the beginning of your affidavit. You say there that you were Ministerialdirektor in the Reich Minister of Economics. From when until when?

A From November 1943, until the collapse.

Q At the time when you were Ministerialdirektor in the Reich Ministry of Economics was the Defendant von der Heyde of any significance? Did he play any role?

A As far as I remember, I only saw von der Heyde once during that period.

Q Where and on what occasion?

A Probably in the autumn of 1944, in Frankfurt-on-the-Oder, at the OKW Economics Conference, I gave a lecture on economic policy and it was there that I met von der Heyde.

Q Witness, as Ministerialdirektor in the Reich Ministry of Economics did you have any official business with I.G. Farben?

A Naturally.

Q Were these negotiations important for both sides?

A As in part it was the Vorstand of I.G. Farben that initiated them, I believe that they considered them important. The questions dealt with were of considerable importance.

Q If the Defendant von der Heyde had any special connection with you, would it not have been expedient to release him from the Wehrmacht and use him for these negotiations?

A I cannot judge that point. At any rate, I never thought of it that I.G. might use von der Heyde for that purpose.

Q Witness, if I understand your affidavit correctly, your connection with von der Heyde ended in 1939.

A The date of 1939 was meant to point out that that was the latest date at which the factual contact with von der Heyde broke off. It is quite possible that personal contact existed at a later time. I actually considered that

likely. For I remember that on the part of I.G. Farben several attempts were made to contact me to discuss various personnel questions and therefore I consider it quite possible that Herr von der Heyde personally discussed such questions with me after 1939, or at least that he helped other gentlemen from the I.G. to have such discussions with me.

Q Witness, you said that certain personnel questions were discussed. What do you mean by that?

A I.G. Farben had a number of Jewish employees and particularly chemists, and I.G. Farben thought it important for them to carry out their plan to emigrate from Germany. As some of these gentlemen knew secrets, the Gestapo made difficulties, and that was how they came to turn to me to get contact with the Gestapo in that way. There is another case I can remember: I believe it was I.G. Farben's "Abwehr" delegate in Louna (counter-intelligence-agent). He had been arrested by the Gestapo and the responsible man thought he had been wrongly arrested. Therefore they reported to me on the case and I rang up the head of the Gestapo, Mueller. At a later time I sent him a written note because I did not want him to evade the question. I saw to it that that case was examined from the Central Office. That is what I meant when I used the term, "personnel questions."

Q Now, you said that the factual activity of Mr. von der Heyde stopped in 1939. Would you first tell me, please, at what time in 1939 approximately?

A When I said 1939 I meant that that was the latest possible date. Any more details about the date I cannot give you. It may quite well have been in 1938.

Q Witness, what were these factual duties of Mr. von

derder Heyde at the time? You said that he was a confidential agent, I believe.

A Yes, "factual task" is really much too big a term. The position which Herr von der Heyde held concerning the SD can only be understood if one has a look at the initial period in which the SD existed, and if one bears in mind that even the slightest bit of good will to give information concerning certain technical questions was valuable for the SD. Contrary to the general view, that the SD from very early on, had been a very powerful machinery, in fact, for example, the economic intelligence service was organized only in 1936. But in order to organize an economic intelligence service, it is necessary to have available certain economic facts. That is to say, for example, one must know what organizations, formations and so forth have a general influence in economic affairs, or what various economic facts are of importance for Germany's economy as a whole. Be it the raw material situation, what is available and what is lacking, be it production, would Germany produce what it does not produce and so forth. In order to have such facts available, the young SD machinery needed a certain number of experts who would make available to them such knowledge without forcing the experts themselves to engage in the writing of any standard works. And that was how Herr von der Heyde in 1936 to 1937 had become one of those persons who made available such information to the industrial section which had just been formed. With the head of the industrial section he gave information and he drew up graphs about industrial organizations and he also made available what surveys about Farben's commitments in enterprises and allied enterprises. That was the task of Herr von der Heyde in the SD. He

was the person who gave information about questions of organization.

Q Was he paid for his work?

A Of course, he was not.

Q Did he have working hours in your office?

A No, he had not.

Q How often did he come to your office?

A I cannot tell you for certain, because I myself only saw him a very few times. But I am sure it was the custom for him once a week or once every fortnight or perhaps twice at the early period to discuss matters with the head of the industrial section.

Q Did Mr. von der Hayde denounce anyone to you?

A He never did that, and that would have been quite out of place, as far as we were concerned; because we were not interested in having people denounced to us.

Q One has the general impression that the purpose of the SD was to receive denunciations about statements about leading personalities of the Third Reich and pass such information on to the Gestapo.

A Well, there was no such thing as the SD. That is a pure fiction. That is just a phantom. Denunciation or espionage or counter-intelligence for the Gestapo -- those were not tasks carried out by the SD at any time. The period which is interesting for our purposes here, that was a period at which the SD-Inland in its big plan for distribution of work did not show any trace of having in its organization a counter-intelligence apparatus for political enemies. But the entire plan of distribution of work, such as we see it, in the Inland SD in 1936 up to 1939 right up to 1945 -- that included purely technical sections. The SD was only

interested in people, as far as they were of any importance in a particular technical field. But it did not interest the SD whether they belonged to the Party or not, whether their opinion was of one kind or another. What interested the SD was merely the importance which these persons had in connection with a certain sphere, that is to say, for example, as production manager or as organization chiefs. That is to say, the SD was interested to know to what extent they exercised an influence over certain spheres of life. It was that in which we were interested.

Q Witness, then the significance of the Defendant von der Heyde must have been very slight for you.

A It was so slight that I, at any rate, was not interested in promoting that contact or in making available to him any of my time to discuss questions with him.

Q Was that also the opinion of your associate whom you mention in your affidavit, Dr. Eilers and Herr May?

A No, Dr. Eilers and Herr May were of a different opinion. And it is quite natural that they should have been, for Herr Eilers had the task of laying the foundation for his intelligence service and from that point of view Herr von der Heyde was of importance to him. But when that came to an end, Herr von der Heyde was no longer useful, because concerning the future development of the SD he could not help us. He had no knowledge which could have been of significance to us. For what he wanted to get out of a confidential agent, that was his knowledge and his experience, which he had gained in his profession or in his social circle.

Q Then I understand you correctly if I say that von der Hayde's purpose in the beginning was information about organizational questions, but you could have looked them up in a reference book.

A Yes.

Q But it was simpler to discuss it personally?

A Yes, it was.

Q Witness, I have a few more questions. The witness Diels told the Tribunal here that every concern had an SD man. Do you know anything about that?

A I can assure you that that is not the case and we were not interested in establishing such contact with the concerns. But, if I may put it this way, the SD under my direction was altogether anti-concern in its attitude.

Q Witness, then it was anti-Farben too?

A Yes, one can say that.

Q Then I have another question, witness. After the beginning of the campaign in Russia in 1941 you received an order to carry out shootings in Russia and you are accused for this.

A Yes.

Q Witness, did you know a little later of the exterminations in Auschwitz by gas?

MR. SPRECHER: Just a minute, Mr. Witness. May I ask counsel how that connects with this affidavit?

DR. HOFFMAN: Mr. President, I withdraw the question. I would have liked to ask a few more questions in that respect for purposes of clarification, but if the prosecution objects, I have finished my examination.

THE PRESIDENT: Any further cross examination of this witness by the defense?

BY DR. FLAEBCHNER (For the defendant Buetafisch):

Q Witness, I should like to ask you a few questions about this Circle of Friends. In your affidavit you say that you were a member of

the Circle of Friends from about 1942 on.

A I think it is more likely to have been 1943 than 1942, and in the affidavit it was meant to mean 1942 through 1943. Honestly, I can't remember properly now.

Q Then I may assume, Witness, that the statements concerning the time before you attended the Circle of Friends were not observed by you personally.

A The Circle of Friends, after all, was sufficiently interesting to the SD for me to obtain some knowledge about it beforehand.

Q Witness, may I ask you, could you describe to us briefly such an evening in the Circle of Friends?

A During the time when I myself knew it, the most pleasant thing about these evenings was that whereas otherwise there was a shortage of liquor, cigars, and food, here the social atmosphere included well-dressed people and interesting people and also there was good food and good drink. Herr Kranefuss received people in a very pleasant way unless he happened to be angry because, for one or two evenings, one hadn't turned up. Cocktails were offered and gradually people sat down at a dinner table. The food was good. Very occasionally there was a lecture and then people got together in groups and discussed such topics which they couldn't discuss at any other pleasant spot in Berlin and certainly the main reason why people came to these evenings was, for the majority of members of the Circle of Friends, that they could meet here on a pleasant and neutral ground, where they could discuss their worries, their anxieties. In my time the Reichsfuehrer-SS appeared, I think, once or twice. During the winter of 1944, he invited the Circle of Friends to his house, but as a rule he did not attend these affairs and therefore there was no supervision exercised by the Reich Leadership SS; Kranefuss was held in respect because people did not want to have any trouble, but he was not exactly a person who was held in such high respect as to issue directives from the SS deputizing for Himmler. In fact, this Circle of Friends had nothing to do whatsoever with the SS.

Q Witness, you said that there was sometimes a lecture. Did you ever hold a lecture on the Gestapo and the SD before this Circle of Friends?

A I once suggested giving a lecture about the SD and I suggested it for the same reason for which I would have liked to do it in Nurnberg—because these economic experts knew as little and perhaps even less about the SD than the prosecution did here, but Himmler was against it and therefore forbade me to give such a lecture.

Q And now my last question. In your affidavit, you say that in 1943 or 1944 Himmler ordered equipment for the divisions which he was setting up, among others from two members of the Circle of Friends. As far as you know, did he approach I. G. Farben or Mr. Buatfish, who represented Farben in the Circle of Friends, in any way?

A All I knew was that the members of the Circle of Friends had discussed armament and weapons and motorized vehicles. I don't think that I. G. produced such things and therefore I don't think Herr Buatfish could have played a part in that conversation. Anyhow I never heard of either I.G. or Buatfish in that connection.

DR. FLAEGHSNER: No further questions.

DR. HOFFMANN: Mr. President, I have another question, which I forgot because of the objection.

THE PRESIDENT: Very well.

BY DR. HOFFMANN:

Q Witness, you have spoken about the importance of the defendant von der Hayde here. Now, the defendant von der Hayde was promoted as an SS man. How do you explain this fact in connection with the opinion which you have just given us?

A Earlier, I was asked whether a confidential agent ("V-Mann") and i.e. von der Hayde was paid for his work and I testified that they did not get paid. Therefore promotion was the only thing that we could offer to our confidential agent and as Herr von der Hayde looked very well in his uniform and for the rest was a delegate for counterintelligence, we

were of the opinion that after all it would be a friendly gesture on our part to let him reach the rank of Hauptsturmfuehrer, for at that time the rank of Hauptsturmbannfuehrer did not have the connotation which it has now.

THE PRESIDENT: Any further cross examination? If not, has the prosecution anything further with this witness?

REDIRECT EXAMINATION

QUESTIONS BY MR. SPRECHER:

Q Witness, in connection with the Circle, do you know whether or not all the members of the Circle were also members of the SS?

A No, I am sure they were not.

Q Did you personally see any of the SS records of these gentlemen, so as to see whether or not they received promotions from time to time?

A No.

Q Did you attend the meeting in Himmler's house when the Circle was invited by Himmler in 1944?

A I think you said 1949.

Q I am sorry, 1944. I am sorry.

A It was at his headquarters in East Prussia. If that is the meeting you are referring to, yes, I attended that meeting.

Q I am sorry, I misunderstood you. Did you ever see the questionnaire which was filled out by von der Heyde in his own handwriting?

A I cannot recall that.

DR. HOFFMANN: Objection. I don't believe that is in the affidavit.

THE PRESIDENT: What do you say to that?

MR. SPRECHER: The witness was asked on cross examination concerning the promotion and the position in the SD of the defendant von der Heyde, and I just wondered if he had that particular thing in his mind at the time he made his answers.

THE PRESIDENT: Well, the objection will be overruled.

MR. SPRECHER: I believe the witness answered "no," so there is no further question. No further questions.

THE PRESIDENT: Unless there is a request for further examination of the witness, the Tribunal is about to excuse him. Mr. Witness, you are excused and the Marshal will escort you from the box. Call your next, Mr. Prosecutor.

MR. SPRECHER: Mr. President, I am not quite certain — Mr. Dubois said he had some kind of a discussion with you about the affiant Ehmann. Can I be advised what is your view concerning that situation as of this morning?

THE PRESIDENT: If I have in mind what you refer to, the Tribunal indicated that it would be glad to hear the cross examination of this witness if he could be produced.

MR. SPRECHER: Well, he can be produced. I have before me here, Mr. President, a form called "Release of Voluntary Witness," which was signed by Mr. Heilbrunn from my division, which had requested Ehmann to be here on the 26th of November 1947. That is last Wednesday. Now, for some reason or other, the affiant Ehmann was around here from Wednesday until yesterday and the prosecution indeed was not advised. Therefore I want to explain to you why I gave you the erroneous information—which was very well corrected by the defense who seemed to know that the witness Ehmann was indeed here, even though he had been released by the prosecution.

THE PRESIDENT: There has been a considerable sparring back and forth between counsel as to whose witness who may be. After all, we regard these witnesses as our witnesses. They do not belong exclusively to the prosecution or defense and our only concern with respect to the relationship between counsel and the witnesses is that the relationship be proper. And I think you gentlemen all know what we mean by that. If the prosecution is taken by some bit of surprise and has some difficulty producing a witness, we will hear with you. We are just

anxious to dispose of as much of this cross examination as we can, in order to relieve the burden on our commissioner. If you have him here or can have him here during the day for cross examination, and sufficient time is left, we will be glad to hear it, because we have set aside this day to conclude the hearings as far as the Tribunal is concerned. That is our view on the subject.

MR. SPRECHER: I was merely trying to explain to you why I made a false representation yesterday morning.

THE PRESIDENT: We can very well understand these circumstances. They occur and there is no explanation necessary in this court.

MR. SPRECHER: In that event, I think it will take only about two minutes for Mr. Ekmann to be produced.

MR. SPRECHER: The affidavits in question are loose documents which the prosecution laid before Your Honors as Exhibit 1819 and Exhibit 1820. That is NI-12725 and NI-12678. We ask that you put both of them, in loose form, in your Document Book 36, at page 130. Under the circumstances, with respect to this witness the Prosecution will have no questions.

THE PRESIDENT: Have you taken steps to ascertain if he is here?

MR. SPRECHER: He will be here in just a second.

THE PRESIDENT: Very well, very well. May I inquire, Mr. Prosecutor, if a third witness, mentioned yesterday, if there is a possibility that he may —

MR. SPRECHER: Yes, Dr. Flick arrived very early this morning and —

THE PRESIDENT: And you expect to produce him sometime during the day?

MR. SPRECHER: He'll be the next witness, and as far as we are concerned he will be the final witness before your Honors.

THE PRESIDENT: Yes. Now that I am certain which of the witnesses will appear today, I can have that list run off — probably this afternoon.

THE PRESIDENT: In that connection, we remind counsel for the defense as promptly as you can, give us your statement as to whether or not any of these witnesses are to be waived, so that we can pass that information on to the commissioner.

You may bring in the witness, Mr. Marshall.

Mr. Witness, you will remain standing for the purpose of being sworn. Raise your right hand, please, say "I" and state your name, and repeat after me: "I swear by God the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing."

(The witness repeated the oath.)

THE PRESIDENT: You may be seated. Did I understand, Mr. Prosecutor, that you have no questions?

MR. SPRECHER: That is correct.

THE PRESIDENT: The witness is with the Defense for cross examination.

DR. GATHER: First of all, a request, Mr. President. May I call upon the defendant Ambros if technical questions should become necessary?

THE PRESIDENT: Yes, if in your judgment that is warranted, it will be permissible.

CROSS EXAMINATION

BY DR. GATHER (for the defendant Ambros):

Q Witness, first of all, I shall consider your affidavit NI-12678, Exhibit 1820, Document Book 35, Do you have it before you?

A Yes, I have.

Q Witness, in this affidavit you speak about the war gas capacities planned before the war. Is it true that the figures which you have given differ from the statements made in court on the 30th of October about the actual capacities, only in so far as Gendorf is given at 3,350 tons of Direct Lost per month, on page 2 of the affidavit.

A Yes, that is correct.

Q Now, you say at the end of number 2 of your affidavit that the plan for Gendorf of 3,350 tons of Direct Lost per month was made before the 1st of September 1939, actually in 1938, and I quote: "I infer this circumstance from Document NI-4990, Exhibit 114." I assume that Exhibit

637 is NI-4990, the blanket contract between the OKH and I.G. concerning Gendorf, of 18 July 1940; is that right?

A Well, I am not informed about your exhibit numbers.

Q The document which I have given you is Exhibit 637, NI-4990. Is that what you mean?

A The document which I now have before me is the same document which was put to me when I was interrogated and from which I drew the conclusions which I incorporated in my new affidavit.

Q I see. Then there is no doubt a mistake when it says Exhibit 114?

A That is possible.

Q Very well, witness.

MR. SPEECHER: Mr. President, I only want to confirm that Dr. Gather is correct. That is an error in the affidavit, in transposition.

THE PRESIDENT: Very well.

DR. GATHER: Thank you.

Q Witness, do you conclude, do you infer this figure 3,350 tons of Direct Lost per month at Gendorf before 1939, perhaps from the passage in this contract that says, "By order of and with funds supplied by the OKH" etc. "in Gendorf" etc. "a plant for the production of 3,350 tons of Direct Lost per month has been constructed." That is to say, perhaps you inferred that if in 1940, when this contract was concluded the plant was already built, then the plans must have been made before 1940, at least a year earlier?

A No, I did not draw my conclusions based on the reason which you have just mentioned.

Q Witness, do you know that the Direct Lost plant did not go into operation until 1943?

A I made that quite clear during my interrogation and I now confirm it again.

Q Not in your affidavit, however.

A I beg your pardon, but I did so in my affidavit. I did say —
"I would like to point out that approximately in the middle of 1943
Gendorf was practically finished and was ready to go into operation."

Q I see. Thank you. Then it is true that the formulation in the
blanket contract "has been built", is incorrect?

A I consider it altogether incorrect and I fail to understand —
but it is of no interest to me here — why Dr. Ambrose signed such
nonsense.

Q Could it not be that this "was built" refers merely to the
other plants, to diglycol?

A I beg your pardon. No, that isn't possible. For I know for
certain that the first product which was manufactured at Gendorf, that
was glycol, was manufactured in May of 1941 and a sample of it was
sent to my office. However, the preliminary product, ethyleneoxide had
been brought in from another factory. Therefore, in the year 1940,
when that contract had been made, the plant for preliminary products
could not yet have been finished.

THE PRESIDENT: The Tribunal will rise for its morning recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Counsel, may I interrupt you just a moment to make an announcement?

I wish to say to Dr. Halte that on my desk and in some papers that pertain to the executive presiding judge matter I have found your documents to which you alluded this morning, and say to you, Mr. Sprecher, that they cleared regularly through the Defense Center and were transmitted to us with translations and under circumstances that indicate that you should have, in your office, the same. So we shall take up Dr. Halte's matters immediately after the noon recess.

BY DR. MATHER (Defense Counsel for defendant Ambros):

Q. Witness, you said earlier that the phrasing "has been produced in the blanket contract of 1940" is wrong. To refresh your memory I should like to show you a document, NI 6127, Exhibit 356, in Book 13. This is a report of the auditing and Trustee Company regarding Anorgana-Gundorf, dated 31 March 1942, that is about two years later than the blanket contract. Under § 14 it reads:

"According to the blanket contract, plants for the production of 600 tons per month of glycerine D, 600 tons per month of oxol, and 3350 tons per month of Direct Lost were to be erected."

Witness, if I understand you correctly, you consider this formulation correct and the formulation in the blanket contract incorrect?

MR. SPEECHER: Just a minute. I hadn't heard the witness say anything that would justify the assumption of counsel. Had the witness said anything?

THE PRESIDENT: The witness can answer it himself. He is intelligent and it would not be improper cross examination, and let the witness say whether or not it is correct or incorrect. We would save time.

THE WITNESS: I have to take one sentence out of connection.

On page 29 it does say that Gendorf was producing by the order and with the means of OKH. Then I have to include your remark that, according to the agreement and the cover contract, it was to be constructed. But, from # 15, I can see that the Gendorf plant was constructed towards the end of May, 1941, and operated with a certain part of its production capacity. That is what I said previously.

BY DR. GATNER:

Q. Yes. Witness, in any case, it is so that from the formulation "has been produced" in the document shown to you by the prosecution, Exhibit 637, you did not draw any conclusion regarding the plans for Direct Lost before the beginning of the war because, in your opinion, it was incorrect?

A. That is correct.

Q. Witness, this blanket contract which was shown to you is dated July, 1940. How could you conclude that plans had to be made before the 1st of September, 1939, although you know, as you have just told me, that the DL plant was not finished until 1943?

A. During my interrogation I expressed that my conclusion which I had made referred to the two order numbers, which were contained in this order of July, 1940.

Q. Only the order numbers?

A. Yes. Merely those order numbers.

Q. The affidavit, paragraph 1, # 2, does not indicate that. Excuse me.

At the end of # 2, on page 3 of the original of your affidavit, page 2 of the English.

A. I can only repeat that on page 3 of my affidavit I state:
"I infer from the document which was submitted to me that this plant was constructed in 1938."

Q. Only from the order numbers you make that restriction?

A. Yes.

Q. Witness, the order numbers in this document from which you draw your conclusion are two figures: 9-7005-38 and 9-VII-247-0102-38.

MR. SPEECHER: Mr. President, for your later reference, this document is at page 35 of Book 35. I mean, at 132. Page 132 of Book 35.

THE WITNESS: I saw it.

BY DR. GATHER:

Q. Do you conclude your arguments from both figures or from the first one or from the second one?

A. I make my conclusion by reason of the fact that there are two numbers. It says "9-something" and then it says "9-VII" and from that I conclude that there were two separate orders.

Q. Do you know of either of these orders from the work in your office?

A. Yes, and especially the second one because it referred to an order for the production of diglycol and oxal.

Q. If I understand you correctly, the second order number does not have anything to do with DL, Direct Lost?

A. No.

Q. And you tell us that from your knowledge of the facts?

A. I can confirm that from the documents that I received in the internment camp. I took down the dates when my office turned over the order to the then Bayerische Stickstoffwerke in 1938. That was exactly on the 29th of March, 1938.

Q Witness, then you merely assume that the first order number contained the first of the plans for DL?

A That was my conclusion, which, as I emphasized already, is not conclusive for me in itself. It is a conclusion that I make,

Q Witness, if I put to you Document NI-7376, Exhibit 633, Book 35, page 176 that is advance notice about the Trostberg project. In the second line of this document you will again find the two order numbers which are mentioned in the blanket contract, but here it says -- and this notice is from the year 1938 -- "Order No. 9-7005-38 (changed to 9-VII-247-0102-38)." Please compare the figures in the document submitted by the Prosecution, the blanket contract, and this last document.

A They are identical.

Q Yes, witness. That means that these numbers are identical?

A Yes.

Q Witness, if these figures are identical, is not your conclusion in your affidavit 1820 under No. 2 wrong because you are acting on the wrong premises?

A That is true, though.

Q Witness, I still do not understand how in spite of your knowledge of the facts which you must have gained from your work you could draw such conclusions. Did you have any other evidence that DL plans from Gendorf were issued before September 1939?

A I have to add something here, one sentence. Our office collected the orders of the General Staffs of the army, navy and airforce for years, and long before 1938 we had them in our pockets, and these General Staffs asked us, "In case of war I ask 5000 -- the next figure was 7800 tons of lost."

Can you then not understand that by reason of these demands, we had to try to find ways and means to realize these demands by approaching the industry and finding out from them to what extent they were able to erect chemical warfare agents plants so that they could meet the demands of the military? And above all they asked us whether a proper process could be

handled on a large scale after we had found out that we could not meet the demands of the army on the old process of oxol because we didn't have the raw materials for that process and that for that reason as soon as we could — and I believe that was already in 1938 — was conferred with industry and asked them,

"Can you make available to us as soon as possible a large-scale production method for Direct Lost?" That these conversations and these conferences already took place in 1938 with the industry, and the general staffs urged us, .

"When will you be ready to initiate your measures to erect these large-scale plants?"

Q Well, witness, that still does not say that there was any evidence that Gendorf specifically was planned before September, 1939. Do you not remember that the advance notice for Gendorf, as you have just seen one for Trostberg, was not issued until 27 September 1939?

A You certainly can't expect me to tell you exact dates after the lapse of ten years whether that happened four weeks before or four weeks after a certain period.

Q Witness —

A Excuse me. You can understand, I believe, that after we had concerned ourselves in our office for years with this problem, it might very well have been possible if such a direct lost process had been available that the order would have been given before the war broke out. That is the decisive point.

Q Witness, I will come back to that later, but, at any rate, this date, 1 September, 1939, is not arbitrarily chosen. It is the dividing line between war and peace. To refresh your memory after ten years, I should like to put to you Document NI-7425, Exhibit 640 in Book 36, page 11. It is a letter from Dr. Kuehne, from Leverkusen, to Dr. Ambros dated 28 September 1939, and the letter begins with the words:

"For your report on the result of the discussions in the HWA, Army Ordnance Office, concerning D-lost, I thank you." I confirm once more that

Leverkusen will take over the planning and operation of D-lost plants proper."

Witness, do you recall this discussion in the Army Ordnance Office in Berlin which was apparently shortly before 28 September 1939?

A No. No, and for the following reason.

Q Thank you, witness. That is enough.

A However, I believe it is important to state it.

Q All right.

THE PRESIDENT: Witness, please, when you said, "No", you answered the question. If Counsel desires that you make an explanation of your answer, he will ask you another question.

THE WITNESS: Thank you.

BY DR. GATHER: ,

Q Witness, do you know that the development experiments with DL which are mentioned here, in Leverkusen I mean, were merely the preliminary work for Gendorf?

A Yes, I know that.

Q Witness, therefore, if you consider this fact, is it not demonstrated in your opinion that the planning of DL-Gendorf took place only later or conceivably at the same time as the planning of Leverkusen, not earlier than the 28th of September, 1939?

A I cannot contradict your conclusion and your proof.

Q Is it true that Gendorf was not planned as an experimental station but as a production plant?

A That already is shown from the capacity of four thousand tons per month.

Q Is it logical to make such plans only when one had developed workable process?

A That is an absolute prerequisite.

Q Now I come back to your previous remark. Before 1 September 1939 was it the case at all?

A Not on the basis of this document.

Q Witness, I still do not understand the reasons for your conclusions. Therefore, I should like to show you a few more documents so that you may perhaps confirm whether the experimental plants and the experiments with the DL process were finished before 1 September 1939?

MR. SPRECHER: Mr. President, is this to refresh the witness' recollection, or is this merely to go into some proof? I think that the last document indicated it didn't refresh the witness' recollection by anything. He merely said that on the basis of the Defense Counsel's proof which was shown to him here, Defense Counsel's assertion was right, and I don't think that that is a proper type of cross examination.

THE PRESIDENT: Well, the witness is not bound to accept the conclusions of some other affidavit, certainly, but it is proper to call his attention to other evidence in the record as a basis for refreshing his recollection and to correct his own conclusions. That would be proper. The question presently asked is hardly in that scope.

Ask another question, Counsel, and.....

MR. SPRECHER: Well, Mr. President, could we have the usual question then as to whether or not these things do refresh the witness' recollection rather than a rather long argument by Counsel before a question is put?

THE PRESIDENT: Well, as we have said before, we cannot undertake to edit the form of these questions, and perhaps the next question will be more in line with what the Prosecution has in mind. I just may say to Counsel for the Defense that I venture to assert that going into all of these intricate details in this cross examination is not calculated to be highly important to the Tribunal. We are not criticizing you whatsoever or placing any limitation upon you, but we do feel that perhaps a more general approach of the subject might serve the same purpose and perhaps shorten the cross examination. Use your best judgment and go along. Ask another question.

DR. GATHER: Thank you. I can formulate my question briefly as follows:

BY DR. GATHER:

Q Can you confirm, witness, that before 1 September 1939 that DL plants and DL production generally had not gone beyond the stage of experimentation?

A Yes.

Q Do you have any proof of that?

A The proofs are what you submitted to me just now.

Q Do you consider this proof adequate?

A Yes.

MR. SPRECHER: May we ask that that go out? It obviously indicates that the purpose of this type of question is --

THE PRESIDENT: Now, let us just take account of where we are. As I understand the witness now, he has said that he is willing to concede that these other documents that have been exhibited to him are correct, and that his conclusion contained in his affidavit is not fully justified. Now, there is nothing improper about that. In other words, if he is shown some other document which causes him to modify his own conclusion, that is the very purpose of cross examination.

MR. SPRECHER: Well, Mr. President, perhaps our feeling runs a good deal deeper. We think that the form of questions here has been very prejudicial, given the fact which must be apparent in the courtroom at the present time, and which was apparent in the last cross examination of this witness; and we don't think that allowing the type of questions that have been put has been helpful in order to find out if this witness had anything independent to contribute, but rather after argument by Defense Counsel which indicates clearly a possible theory upon which different conclusions might be arrived at, then the witness is expected to say "yes."

THE PRESIDENT: Now, Counsel, the responsibility of passing on whether these questions are proper or improper is that of the Tribunal, which we will gladly assume, and Counsel for the Prosecution can lit his observations

to objections. We see nothing improper and certainly nothing prejudicial in the type of cross examination, except perhaps some of the questions have been somewhat involved and might have been more simply stated. There is nothing presently before the Tribunal. The Tribunal has indicated what its interest is in this cross examination.

The Defense may continue with the cross examination.

DR. GATHER: Mr. President, I should like to make merely one remark. I had the impression that the witness was brought to his conclusion by being shown one document by the Prosecution, and in my cross examination I have tried to show him several documents which will lead him to a different conclusion.

BY DR. GATHER:

Q If I understood you correctly, witness, then under the weight of my documentary material you would consider your conclusion in the affidavit at the end of No. 2, page 3 of the original as wrong?

A Yes.

Q Witness, the logical result then is that your figures of planning must be changed?

A That is correct, though.

Q Witness, before I make these corrections regarding Gendorf, I should like to discuss the Huels figure which is on page 2, 200 tons per month capacity. Witness, is it true that Huels was merely an experimental cell?

A That is correct.

Q This is on page 2 of the affidavit, Exhibit 1820 under No. 1. Witness, is it true that in that case Huels cannot be included under the planned chemical warfare agents capacities, since chemical warfare agents capacity means production volume?

A Excuse me. You have to leave that to me. If I list this planning of 200 tons, I do that for the reason because we from the military were forced in case of a war with gas to utilize all capacities, whether experimental plant or large scale plant. That is the reason I include it.

Q But, witness, surely with the reservation that there was never any production to this extent and that production could never be carried out to this extent?

A It is well known that we did not fight with gas. We experimented with the plant and closed it down again.

Q Thank you. Witness, as a consequence of this correction, I will leave Huels with that reservation. What are your calculations then? Can you make the correction now?

A The first column remains. The second column of 4,150 is reduced to 800.

Q 800. Yes.

A The Third column remains as it is, 2,330, and the sum of the columns amounts to 3,330.

Q 3,330. Yes.

A You have to lower the other figures accordingly. 3,330.

Q That is about 70%.

A These are the last firms which were independent from Farben, and that is changed from 41 to 70%.

THE PRESIDENT: Gentlemen, please observe these lights. You are going too rapidly. Take your time and give us some pauses for translation.

Now, witness, you may conclude your answer.

THE WITNESS: I figured out just now that the percentage of 41% is changed to 70; that is to say, the firms which were independent from Farben, 55.4% — these are OKH-owned works operated by Farben — is changed to 24%, and the first percentage, Farben-owned plants, 3.6% must be increased accordingly, since the total is less, and this must be changed to 6%.

BY DR. GATHER:

Q I see. I will not be wrong, witness, if I conclude that the figures thus arrived at, although they give the figures of the plant by 1 September 1939, do not differ considerably from capacity on 1 September 1939?

A Let me have a look at it first. There are certain deviations.

Q Slight ones? Comparatively slight ones?

A From 8% to 30%.

Q But only because you are referring to the planned figures?

A Quite so.

Q Thank you. Now I come to No. 3, of your affidavit, witness.

You say that Document MI-11105, Exhibit 1572, was submitted to you, and from it you then quote a letter of the Reich Office for Economic Development, page 1. Witness, was only this page 1 shown to you which gives the situation on 1 December 1942, or were you shown the whole document?

A Page 1 of the document quoted by you can be found in the appendix to my affidavit.

Q Yes.

A And that was the basis for my calculations, page 1 of that document.

Q Witness, what were the explanations of this page 1? Can you still recall them?

A Yes, I still remember them, but they are not important for the calculations because I have only to express my opinion to the figures.

Q Witness, I cannot follow your argument. You say the Krauch office drew up a report on capacities which are finished or about to be finished as of 1 December 1942, and farther down on page 4 of your affidavit you say,

"In accordance with this, we arrive at the following capacities in the opinion of the Krauch office." And one line below that "I have used the higher of the alternative figures for Gendorf, 4,000 tons per month, since in case of gas warfare this capacity would have been utilized." Witness, is this last conclusion or assertion your opinion or that of the Krauch office?

A The fact that 4,000 would have been used instead of 900; is that what you mean?

Q Yes.

A Yes, that is my opinion.

Q Witness, in this conclusion did you consider that this document, which you have attached to your affidavit, gives the following reservation regarding the 4,000 tons per month for Gendorf? I have had an opportunity to look at this document in the Prosecutions office. Unfortunately, it was not put into evidence yesterday. There it says "Actual production possibilities." That is what I understand to mean "capacity".

A Yes.

Q "From the first of April 1943" -- that is three months later -- "D'oster Gendorf 1,000 tons per month". And then a further reservation -- "1,000 tons per month D'oster Gendorf, we must remark that Farben hopes by this time" -- that is the first of April 1943 -- "to have overcome the existing difficulties."

Were you aware of these reservations which were part of this document, on page 2 or 3?

A I told you already once before that in regard to the figures of the Krauch Office, which I was asked to calculate, I have already given this point of view, that I consider them too high, especially Gendorf. You only have to read what I say in my affidavit. They are, furthermore, a confirmation of a letter of my office which I of course placed more confidence in with regard to figures than I do in the letters of other offices. And that is the document Exhibit 1572 that you already mentioned, a letter of my department to the Reich Ministry for Armaments and War Production, which gives a complete survey of the situation in the chemical warfare agents field, as from the first of May 1943 to the first of May 1944.

You put to me just now that in some letter that you saw

under this exhibit 1572 it was indicated that for Gendorf the production figure was 1,000. In the letter of my office, which I agree to, of course, I say that we are ready to produce on the first of May 1943 with 500 tons. That is approximately what I said.

Q Witness, my question is as follows. Is it not wrong then to list Gendorf with 4,000 tons per month as a finished or unfinished plant on the first of September 1942?

A Yes, that is correct. But I told you once before the figures are on the paper because I was asked to figure them out, to calculate them because I know what is to be calculated to belong to Farben and what belongs to other plants, and that is the reason why I made those reservations in my own figures.

Q Yes, witness, these reservations are not only in your affidavit but also in the document which was submitted to you. I merely wanted to ask you whether you considered that. In your opinion, is that document that you are analysing here in detail a complete reproduction of this document with all its reservations?

A No, that is not such a reproduction, but it is the business of the Krauch Office not to list such figures if you later take them all back and say you cannot include them.

Q Thank you. Then it will not be necessary to go into a calculation of this table. It is your conclusion ...

A That is clearly to be seen in my affidavit. I state that there.

Q Thank you. Then I have no further question on this affidavit.

I come now to your affidavit NI-12725, Exhibit 1819, Book 35.

Witness, do I understand you correctly that in this affidavit you explain your testimony in court of the 30th of October with the aid of documents, and not only from your memory?

A This affidavit constitutes an analysis of my testimony that I made on the 30th of October 1947. That is the proof for my statements that I made in court on that day.

Q Did you have an opportunity in the meantime to check your figures with the aid of documents?

A Yes; on the basis of Exhibit 1572; that was already mentioned.

Q Did you find any significant differences from what you said in court?

A They are an extensive confirmation of the figures I mentioned in court, and especially because the figures mentioned in 1572 are actually official figures whereas the figures I gave in court were only estimates in one or two cases, according to the best of my knowledge.

If you are interested, I can give you the deviations which result as compared to the estimates made in court.

Q Thank you, that is not necessary if they are not significant.

A Anyway, the figures in the official document in Exhibit 1572 are not considerably lower, but they are somewhat lower -- five to ten percent from the figures I gave.

DR. GATHER (Counsel for Ambros): Mr. President, I have a technical question. This Exhibit 1572, if I am correctly informed, was not put into evidence yesterday by the Prosecution. Is it possible, assuming that I can get this document from the Prosecution, for me to offer it as Exhibit Ambros No. 15, in order to give a factual basis for

this cross-examination?

THE PRESIDENT: If counsel is satisfied that the exhibit referred to is necessary and proper for the consideration of the Tribunal and the witness in the cross-examination of this witness, he may offer the document as a part of his cross-examination.

DR. GATHER: Mr. President, I should like to offer this document, NI-1890, as Ambros Exhibit No. 15.

THE PRESIDENT: Are we correctly informed that that document was marked for identification purposes with a Prosecution number?

DR. GATHER: Yes; with the exhibit number 1572, but yesterday the remark was made that parts of this document were contained in it, which are Ehmahn's affidavits, and the document itself was not introduced.

I beg your pardon; it is NI-11105. I was mistaken. I gave the wrong number before.

THE PRESIDENT: Then the document NI-11105, which has heretofore been marked as Prosecution's Exhibit 1572, for purposes of identification, is now admitted in evidence as Ambros Exhibit 15, as a part of the cross-examination of the witness on the stand.

DR. GATHER: Thank you.

BY DR. GATHER:

Q Then it will not be necessary to go into the figures in detail.

Now a few technical questions about Exhibit 1819. On page 1 you speak about capacity, that was during your last testimony in court?

A The word "Leistungsfähigkeit" is a good German translation of the English "capacity".

Q Then, witness, in column 2, "OKH -owned plants operated by I.G.", a reference in which I.G. held a share, why do you put the limit at 70 percent?

A Excuse me. Are you now referring to capacity? To what date are you referring?

Q Yes; 1 September 1939, and also later. Column 2. You speak of I.G. - operated plants and you always speak of a 70 percent share. Why? Why 70 percent?

A During the examination the question of Huels cropped up, what Huels should be classified as. Huels had a participation of 74 percent Farben share, and I believe 26 percent Hybernian. I don't know the exact figures. Then the question also cropped up regarding Bayerische Stickstoffwerke because they were classified as I.G.-majority stock, and for that reason we included this as over 70 percent.

Q And this participation under 70 percent; whether it is 30- or 40 percent, the chart would not be changed?

A No.

THE PRESIDENT: The Tribunal will at this time rise for the noon recess.

(The Tribunal recessed until 1330 hours.)

AFTERNOON SESSION

(The hearing reconvened at 1330 hours, 2 Dec. 1947)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Counsel, may we please interrupt your cross-examination temporarily? May we interrupt you just for a little bit, please?

The Tribunal is now ready to rule on the motion of the Prosecution to reconsider and set aside its ruling of 7 November 1947, appearing in transcript pages 3484 and 3542 - 3, rejecting the Prosecution's offer of affidavits by deceased affiants. After due consideration, it is the opinion of a majority of the members of the Tribunal that the motion is not well taken, and it is now overruled.

JUDGE HERBERT: Merely for the record, I should like the record to note that I disagree with the ruling entered. In my opinion the motion to reconsider for the reasons advanced fully in the Prosecution's motion should now be granted. It is my view that to make admissibility of affidavits conditional upon the ability to produce a witness for cross-examination is not the proper interpretation of Article 4 (e) and Article 7 of Military Ordinance Number VII. And for this reason, without dwelling upon it in further detail, I cannot concur in the ruling, and believe that the previous ruling of the Tribunal in that regard should be reversed, as is suggested in the motion which has been filed.

Now, closely related hereto is the ruling of the Tribunal this morning with reference to the cross-examination of defendants who have given affidavits implicating other defendants. I concur in the ruling of the Tribunal on that subject, although I recognize that that ruling is predicated upon a conception of a right of cross-examination which is different from my own, but I concur in the ruling because, in my opinion, it works out a practical means of handling the situation in the balance of the trial insofar as a means of affording cross-examination of defendants who have given affidavits implicating other defendants is provided by that ruling. I am not prepared, however, to say that if an eventuality should arise in

which one of the defendants should elect not to take the stand, that his affidavit should not be considered in evidence for all purposes and against all defendants. With that reservation, I concur in the other aspect of the ruling which is related to the first matter announced by the President.

THE PRESIDENT: Now, if counsel pleases, I should like to discuss with you just for a moment - and very informally - the program for the balance of the day. We have on the witness stand a witness now in the process of cross-examination. Prosecution indicated this morning, I believe, that there was another witness available for cross-examination. The Tribunal at the morning session passed over until this hour the matter raised by Dr. Helte. I may say to you that, somewhat over his objections, I feel obliged to state to counsel that one of my associates, Judge Morris, feels quite indisposed today. He is not at all well, and I have urged him not to punish himself by remaining through this session. He should like, if it is agreeable to counsel, to take up Dr. Helte's matter now, while he is here, and if he does not feel better by the time that is concluded, I should like to know, as your presiding officer, whether or not you would prefer that we recess immediately and reconvene on the 17th instead of the 18th, or whether you would, by agreement, waive the attendance of Judge Morris for the completion of the cross-examination and let Judge Hebert and your president handle the matter.

We wish you to be satisfied about it, if you can agree on it. If not, we will do the best we can under the circumstances.

What does the Prosecution say?

MR. SPEECHER: Mr. President, the witness Dr. Orlik was brought to Farnberg once before and because of some difficulties which were occasioned at that time, had to return to Czechoslovakia. He is the head of a large clinic there and has returned only with the greatest of difficulty. I am not at all certain that he will want to come back again after this much difficulty. I have been informed that

Defense counsel plans a very short cross-examination of this witness, and, assuming that this cross-examination will not go on very much longer, I would like to ask if it is possible to make some arrangements, if nothing else, to have the Commissioner immediately hear Dr. Orlik, or one of Your Honors, or the rest of the Tribunal to sit.

THE PRESIDENT: Would you have any objection to Judge Hebert and your president sitting for the balance of the day if Judge Morris asked to be excused?

MR. SPEICHER: Certainly not.

THE PRESIDENT: What says the Defense?

DR. BOETIGER: No objection, Mr. President.

THE PRESIDENT: Very well.

Now, in order that we can close up as many of these routine matters as possible, I am going to ask the Counsel that is cross-examining the witness, to step aside and see if we cannot adjust the matter that Dr. Nolte raised this morning, and have that behind us.

Dr. Nolte, we will now hear you.

DR. FLADORSCHER: I believe, Mr. President, that the cross-examination of the witness Orlik will not last more than twenty minutes.

THE PRESIDENT: Very well.

DR. FLADORSCHER: We will make it as brief as possible.

THE PRESIDENT: Very well.

May I inquire, Dr. Nolte, if you have made any progress on reconciling your matters with the Prosecution during the interim?

DR. NOLTE: I hope that the progress which we have made is such that the statement which I will make regarding Langyel, Dietsch and Hoven will settle the matter so that there remains only the Afrine matter - the five letters - and the Ding Diary, page 1.

THE PRESIDENT: Very well.

DR. NOLTE: The affidavit of Olga Langyel, HI-10932, Exhibit 1490, Book 75, page 190 - I commented on this in a letter dated the 26th of No-

November, and submitted the affidavit to the Tribunal through the prescribed channels. And in this affidavit I marked the passages to which I have objections because they are either irrelevant or inadmissible. Yesterday the Prosecution dictated into the record the passages which are to be stricken. I do not know the record but I have no doubt that the statement of the Prosecution agrees with the affidavit as corrected by me, a copy of which is in the hands of the Tribunal. As far as the Document III-12182, Exhibit 1621, Book 84, page 92, is concerned, the Hoven affidavit, I raised an objection because this affidavit largely consists of information obtained from third parties, conclusions and expressions of opinion. The Tribunal acknowledged that this objection was justified and said that the Tribunal would be able to judge the probative value of the individual parts of the affidavit.

The same question was then discussed when I objected to the Diotech affidavit; that is Document 12184, Exhibit 1630, Book 84, page 97.

(Dr. Nelte continuing)

The Tribunal suggested that the Prosecution and the Defense should reach an agreement on those parts of the Hoven and Dietzsch affidavit which were irrelevant or inadmissible. One point of view which was of importance for the defense here was that the cross-examination of these two witnesses who, as the Prosecution stated, could be brought to Murnberg only with great difficulty, could be waived if the affidavits could be limited to the parts which gave only the personal knowledge of the witnesses.

I discussed with the Prosecution the possibility of reading such an agreement. It resulted very soon that agreement was not possible. I suggested that I designate the individual passages in the several affidavits which I considered irrelevant and the Prosecution would, in turn, designate the parts which they would like to strike out.

In carrying out this agreement, I sent the two affidavits, Hoven and Dietzsch, Exhibit 1611 and Exhibit 1630, through the prescribed channels, to the Tribunal, on the 26th of November. The Prosecution, in turn, in Court yesterday made a statement on the Hoven affidavit which is Exhibit 1611. In this statement, the manuscript of which I have here before me, the Prosecution says, without naming individual parts, that they consider this affidavit relevant with the exception of two or three unimportant parts, but they do not cite what these parts are.

As regards the Dietzsch affidavit, Exhibit 1630, the Prosecution also made a statement in Court yesterday mentioning paragraphs 2, 5, 8, 11 and 13, agreeing, to a limited extent with my ideas of what should be stricken out. The parts which I considered irrelevant of these affidavits are indicated in the letter which I have submitted to the Tribunal, so that the Tribunal is aware of the opinion of the Prosecution, as well as of my opinion.

I shall not read the parts of these affidavits which I consider

irrelevant. I would be satisfied if the Tribunal were to take judicial notice of the affidavits which I have attached to my letter, and incorporated them into the record, and I believe that the opinion, as stated by both sides, make it possible for the Tribunal to reach a decision which will make it possible for the Defense to waive the cross examination of Hoven and Dietzsch. That is my statement on these three affidavits and before I go on to my other objection, I should like to ask whether the Prosecution is satisfied with this statement.

MR. LINSKOFF: If it please the Court, the Prosecution of its own accord, in order to be as helpful as it could, and so avoiding encumbering the record, with portions that might be irrelevant or immaterial to the issues, struck of its own accord, from two affidavits, - that of Dietzsch and Hoven, - the portions which it thought would not be relevant to the issues before the Court.

With respect to the point now being made by counsel for the Defense, the Prosecution wants to make its attitude clear before the Court, because it feels that it would be unfortunate if a false reliance was taken by the Counsel for the Defense upon portions of an affidavit which it considers hearsay, but which might not in fact be hearsay, but might be relied upon by the Tribunal in reaching a decision.

Now for example, in the affidavit of Hoven, the reason the Prosecution did not refer to that, except in passing, yesterday, was that the Tribunal had already declared the document admissible and had indicated it would itself be the Judge as to the portions which were competent and those which were not competent. The Tribunal then had suggested that with respect to the following two documents, - the affidavits of Dietzsch and Hoven, that the Prosecution and Defense should attempt, in the event it would be possible, to get together and save the time of the Tribunal.

Within reason, we could not get together on what constituted irrelevant material on the portion of the Hoven affidavit which I discussed with Dr. Nolte this morning. On paragraph 2 of the affidavit, there is the statement of Dr. Hoven to the effect that the reason that correspondence between I. G. Farben and Dr. Ding were addressed to him, Dr. Hoven, was to avoid the knowledge that they were dealing with Dr. Ding's experimental station in the Concentration Camp Buchenwald.

Now his statement that Dr. Ding informed him of that, is typical of what the Prosecution deems completely relevant and competent testimony. This man is himself the receiver of the consignments, is himself the receiver and addressee of the letters from I. G. Farben, and he states here what his instructions were concerning these consignments and concerning those letters, and what Dr. Ding, his superior, told him about it.

Now that type of thing, where the affiant states what he was told in the course of his business, in the course of his work, by his superior, in connection with that work, is deemed competent, relevant and material to the issues before this Tribunal, and the Prosecution would not want the Defense, in reliance upon an incompetence, in their opinion to fail to cross examine on issues which may otherwise be material and important before this Court.

THE PRESIDENT: Counsel, the President understands Dr. Nolte to suggest, and you may correct us if we are misinformed, that he is willing to let this matter rest with the Tribunal, so far as the Prosecution's Exhibit 1490, 1611 and 1630, providing that in the consideration of the exhibits the Tribunal take into account, the objections that he has urged against those exhibits, - and under those circumstances, he is willing to waive the cross-examination of the witnesses.

That is the way the President understood Dr. Nolte.

May I inquire now of the Prosecution, are you likewise willing to allow these affidavits to go to the Tribunal, with your objections and suggestions as to the competent parts of them in the record, for such weight and such materiality, as the Tribunal in due course shall determine they are entitled to in the light of your observations, and Dr. Nelte's objections?

MR. HINSKOFF: The Prosecution is perfectly willing to have it so understood.

May I add that in view of the fact that Dr. Nelte has dealt at length with the various portions of each affidavit to which they think attention should be directed, it might be helpful if the Prosecution referred, in a short note to the Tribunal, its own comments on the same portions of the affidavit.

THE PRESIDENT: That is very well. If that arrangement is satisfactory to counsel for both sides, we shall consider the documents that I indicated a moment ago, for what they may be worth, in the light of the suggestions that have been made by Dr. Nelte, and have been or may be pointed out to the Court by the Prosecution, and give them such weight as we consider that they are entitled to have, after taking into account the positions of counsel for the Prosecution and the Defense.

Is that in accord with your thought, Dr. Nelte?

DR. NELTE: Yes.

THE PRESIDENT: Very well. Then that is the disposition with reference to Exhibit 1490, 1611, and 1630, and the Tribunal will see that the objections that have been urged, and the suggestions that have been made, are kept in mind in the consideration of those documents.

Now, Dr. Nelte, I believe you have another matter.

DR. HELTE: I should like to refer to the Ding Diary now, the first page. This is Document No. 265, Exhibit 1608, Book 84.

THE PRESIDENT: Pardon an interruption, but I felt that there may be a possibility of an understanding as between Counsel and the Tribunal or some members of the Tribunal.

Is the Chair correct in assuming that the first page of the Ding Diary was not offered in evidence?

MR. MINSKOFF: No, the first page of the Ding diary was offered in evidence yesterday.

THE PRESIDENT: Our recollection is that you offered the interrogation as bearing upon page 1 of the Diary, but without recourse to the record, our recollection would further be that you did not offer page 1.

MR. MINSKOFF: If Your Honor please, I am not sure now. My intention had been to offer the additional testimony of Dr. Hoven and then call the Tribunal's attention to the decision of the Medical case, and to ask you to take judicial notice of that, and to re-offer the first page of the diary, if we had not done that.

THE PRESIDENT: Perhaps the Secretary can enlighten us as to whether or not he does have any memory or recollection as to whether or not the first page of the diary...Do you know what number it bore? And if it was introduced yesterday or offered again?

MR. MINSKOFF: It is 1608, the same number that the diary bore.

THE PRESIDENT: The Court is quite definite in its recollection that the first page was not re-offered.

MR. MINSKOFF: Will the Court grant the Prosecution permission to reoffer it at this time?

THE PRESIDENT: That was the object of this suggestion so that you may reoffer it, and Dr. Helte may make his objection, and then we can reach a conclusion.

MR. HINSKOFF: The Prosecution now offers the first page of the Ding Diary, which is Prosecution's Exhibit 1608, in evidence.

THE PRESIDENT: Now, Dr. Nelte, first I would call your attention to the fact as to the additional documents bearing on the Ding Diary that were offered in evidence yesterday in your absence, and ask you if you are advised as to those matters?

DR. NELTE: Yes.

THE PRESIDENT: And if you have any objections to the receiving in evidence of the first page of the so-called Ding Diary, the Tribunal will now hear your objections.

DR. NELTE: Yesterday in regard to the first page of the Ding Diary, the Prosecution offered Documents NI 12796, as Exhibit 1830, and NI 12609 as Exhibit 1831. I assume that the Tribunal remembers the explanation which I gave when the Ding Diary was first offered in evidence as Exhibit 1608.

In the letter dated 26 November, I submitted to the Tribunal through the prescribed channels, the statement which I made in the Medical trial as Defense Counsel for the Defendant Handloser on the same subject, and I believe that in the meantime the Tribunal has received this statement. Is my assumption correct?

THE PRESIDENT: Yes, but that, Dr. Nelte, appears to be both Yes and No. We do have your statement, but unfortunately it came to us in a language which is foreign to us. We have had no translation of it.

DR. NELTE: Then the translation division did not translate it.

THE PRESIDENT: I may say that from what was said this morning, it might be construed as somewhat critical of you as to the means by which this document was transmitted to us, is not in point. It did come through regular channels, was in proper form to be presented. It should have been processed by translation and gone to the Prosecution and the Tribunal. Whether the Prosecution ever got it, I know

not, but we do have your original document which came from the Defense center without any appropriate translation.

MR. SPRECHER: Mr. President, since Dr. Nelte spoke of the motion as a letter, I thought we had not had a copy, but now that I find out in effect that it was a motion, I find we have a copy. Therefore, I, for a second time, withdraw any remarks I made which may have been misconstrued.

THE PRESIDENT: So, Doctor, while we have it, it is of no use to us, and perhaps you can very briefly summarize what you had to say with reference to the Ding Diary, and let it come to us from the translation of your remarks now.

DR. HELTE: My contention concerning the first page of the Ding Diary is that this first page which is being offered in evidence here is not the original notes of the diary, or what was originally dictated for the diary, but that it was added later, and that the original page was destroyed.

When I spoke on the subject, I pointed out the fact that the heading of this first page could not have been made before January, 1943, and I refer to the Ding Diary in book 85, page 25 of the German version, where we find the statement:

"9 January 1943. By order of the Chief of the Medical Service of the Waffen-SS, SS-Gruppenfuehrer, Major General of the Waffen-SS, Dr. Gonsken, the Typhus Research Station in Concentration Camp Buchenwald, will now be called Department for Typhus and Virus Research."

Since the first entry in the Ding Diary was on 29 December, 1941, the entry of 29 January, 1941, could not have been made before the 9th of January, 1943, and I am therefore of the opinion that this fact alone proves that the first page of the Ding Diary, as you have it before you, does not tally with the original Ding Diary, and that therefore, the first page is a forgery.

In the previous discussion we also pointed out that the first

page of the original diary bears no signature of Dr. Ding, and that the documents offered by the Prosecution are false, and the Tribunal has established with the aid of the document, that the first page has no signature, and is therefore not covered by Dr. Ding's signature.

Now the Prosecution has submitted that the Prosecution said in the Medical case that this question was not of any importance. The closing brief of the Prosecution which was offered here, says, and I quote:

"The Defense placed great emphasis on the fact that Page 1 of the diary was written with an older typewriter ribbon than page 2 and the following and was therefore probably written later. The Prosecution does not want to quarrel about this." I quote again, "Heven gave the very logical explanation that this page was probably written ~~now~~ when the experimental station was given the name, 'Department for Typhus and Virus Research'".

Then yesterday the Prosecution offered you the statement of the witness Kogon on cross-examination and from this testimony, you will obtain confirmation of the fact that Kogon confirms that it is not at all impossible that the first page may have been rewritten later.

Kogon cannot be considered a witness to the fact that the first page is the authentic first page of the diary.

And now I refer to the memorandum which you have in German from my closing brief in the Medical trial, and from that closing statement I should like to refer merely to the following fact.

On the first page of the diary you will find under the date of 29 December, 1941, a list of a number of persons, Mrugowsky, Gildemeister, and in the course of the Medical trial, it was shown that on the 29th of January, 1941, Mrugowsky was not even Standartenfuhrer yet, in which capacity he is listed on the 29th December, 1941, in the Ding Diary on page 1.

Secondly, it was found that the Robert Koch Institute was called a Reich Institute in this entry, and the evidence showed that it was only later that the Robert Koch Institute became a Reich Institute and, thirdly, it was found that Prof. Gildemeister is called President of the Robert Koch Institute, although he became President of that institute only later. Also as page two of the expose shows, reference is made to the affidavit of the witness Dietzsch submitted in the Medical trial and the contents of this affidavit with reference to the so-called "typhus discussion" of 29 December 1941 is considerably different from the facts given on page one of the Ding diary. Finally, a written opinion was offered, Mrugowsky Exhibit in the Medical Case No. 22, Document Mrugowsky 8 page 76 of the Document Book for Mrugowsky. This is an opinion of the handwriting experts Zettner and Nastvogel and with respect to page one the experts state that this page was written at a different time, with a different typewriter ribbon and with a different typewriter. If you take all these facts together you must with me come to the conclusion that the first page of the Ding diary was not only written later but also that this first page of the Ding diary was later substituted for the original first page so that the authentic original first page of the Ding diary was replaced by a page of different contents. Therefore, I believe that the first page of the Ding diary should not be admitted into evidence.

THE PRESIDENT: Now, we shall hear very briefly, we hope, the views of the Prosecution on this matter.

MR. KINSKOFF: Very briefly, your Honor. It may be noted that with respect to the contention of the comments of Dr. Nelte there is no dispute as to fact. The document offered into evidence by the Prosecution, Document 12796, Prosecution Exhibit 1830, the testimony of Do. Kogon at the Medical trial states very clearly and unambiguously that the first page could very well have been re-written later when they changed the title of the organization. All the proof that it was actually changed is proof directed to a question which there's no contest over. Nothing that Dr. Nelte has offered before this Tribunal up to the present point is new. The document given to the Tribunal, although in German, is part of the former proceedings before

the Military Tribunal considering the Medical case. All the arguments contained in it and the arguments made orally before the Tribunal today are all arguments which were carefully considered by the Tribunal which had an advantage over the present Tribunal, in that the witnesses concerned were before the Tribunal, Dr. Kogon, Kapo Dietzsch and the others were all before the Tribunal. It may also be pointed out that the first page was far more vital to the decision in that case than it is in the present case, and the evidence was very heavily contested on the basis of all that. The Court decided that the diary in toto, including the first page, was admissible in evidence. The Prosecution would like to point to only one further thing and that's on the first page of Document 12796, Exhibit 1830, in the answer of Dr. Kogon concerning the diary he says: "I knew the history of this diary from the statements of Dr. Ding-Schuler himself and also from the statements of Kapo Arthur Dietzsch as well as the physician's clerk in Block 36, a certain Klodzinsky. I also know on the basis of the documents which were started from the very beginning of the establishment of that Block and on the basis of the personal notes which Dr. Schuler made in his private diary, which he dictated, as far as I can recall, etc." The testimony of Dr. Kogon was that he, as personal secretary of Dr. Ding-Schuler, as a person who had access to all of his papers, his notes, his experiments, his correspondence, as a person who was going to write the history of Dr. Ding-Schuler had better first-hand knowledge of the documents which came into his possession at the close of the war and remained with him until he brought them to the American authorities than any other witness. If it please the Court, it's submitted by the Prosecution that nothing has been offered either before this Court or before the Court hearing the Medical case which proved any part of the first page wrong. The Court has decided in the Medical case that the facts as alleged in the first page were correct and the statements here of counsel as to contentions with respect to that page are merely contentions that were made at that time as well as now but with which the Court did not go along.

THE COURT: Just a moment.

MR. KINSKOFF: May I make one further offer? If there's any doubt

with respect to the authenticity, the Prosecution is perfectly happy to bring Dr. Kogon and the other witnesses before the Tribunal or before the Commission.

THE PRESIDENT: The Tribunal is presently concerned only with whether or not this first page of the so-called "Ding Diary" is competent evidence. We are not presently concerned with whether it has any weight or what weight should be given to it. We are of the opinion, in view of the showing made subsequent to the first offer of the first page of the document and the precedent established by the other Tribunal that had it before it, that there is a sufficient showing to meet the requirements of competency. The offer of the document, being the first page of the Ding Diary and marked Exhibit number -- may I ask what, please?

THE SECRETARY: 1608

THE PRESIDENT: 1608 -- will be sustained and the objections to the introduction of the document overruled with the observation that the admission of the document by the Tribunal is not to be construed as any indication whatever as to what weight or whether any weight will be attached to the first page of the diary. Dr. Nelte, do you have any other matter now that occurred here in your absence yesterday that is necessary for us to consider?

DR. NELTE: Yes, Mr. President. Part of the Affidavit Afrine was offered yesterday which was not admitted earlier. That's a part of the affidavit referring to the well known five letters, excuse me for a moment -- it's in Book 75. That's Document NI-7184, Exhibit 1465, page 97 in the German book. Do you have the English page? The Tribunal will remember that the witness Afrine in his affidavit mentions five letters which, as one must gather from the presentation of the Prosecution, are charged against I.G. Farben. That is to say against the Bayer firm. The document in the English book 75 is on page 82. In this case, which is of special importance, I must first point out that the witness speaks of a German firm named Baer. The Afrine affidavit does not at any other point state that this is a mistake; that the real name of the firm is Bayer. In the original submitted to you,

the name is spelled Baer. I must assume that the Prosecution thinks this is a typographical error, otherwise, this part of the affidavit would be completely irrelevant. In view of the significance of this formal matter and because the Prosecution did not correct this mistake, although Afrine was here himself and assumed there was a Baer firm. The rest of my statement can be understood only if we assume that there is a firm with the name Bayer. In the affidavit you will find a remark of the affiant Afrine where Afrine says, after reproducing the contents of five letters verbatim and I quote: Doubtlessly, by writing to the Russian authorities, Capt. Kunin, you can find the letters which I translated for him." The witness says where the letters are and, I believe, according to the principles of best evidence one cannot permit a witness to give from memory an affidavit to reproduce the contents of letters which, I may say, are incomprehensible and incredible. The Prosecution cannot rely on the reproduction of letters if there's an opportunity of producing the letters themselves. I point out that the Prosecution must say whether they immediately approached the authorities which the affiant mentioned as being in possession of the letters. Secondly, immediately when this document was offered I immediately pointed out to the Prosecution that a report was published in a magazine mentioning the letter of the Firm Bayer and this report says and I quote: "In the Nurnberg trials Prof. Bissoire read a letter of the Director of the Bayer factory addressed to the camp administration in the Camp Auschwitz. In this letter he complained about the poor conditions of all the women who had been recently sent to him. None of the deported could stand the laboratory experiments, could live through them." This completes the contents of the Afrine affidavit.

THE PRESIDENT: Will counsel permit an interruption, please? The Tribunal has considered this matter and remembered the comment that was made at the time the document was offered and the letters were dropped from the exhibit then received in evidence. We feel that the Prosecution has failed to discharge the responsibility, resting upon it to show that these reports of these letters as set out in this exhibit have any connection with any of the defendants individually or have any connection with the defendants even remotely through the instrumentality of Farben, as that language is used in this indictment. There's such a probability or high possibility or high probability of mistaken identity of names that we are forced to the conclusion that there isn't a sufficient showing to connect the defendants directly or indirectly with what purports to be the translation of these letters. We say that without going further to discuss whether or not there's a sufficient showing as to entitle them to be introduced by way of secondary evidence. By that I mean to say, whether or not they may be admitted, although not the best evidence. Under the circumstances the Tribunal feels well justified to sustain the objection of the defense to the introduction of this exhibit.

MR. MINSKOFF: May it please the Court, may I say a few words? The Prosecution has at no time even discussed the relevancy of these documents. If you will recall, the offer was made during the time that the Auschwitz documents were being introduced. At that time we just heard Dr. Nelte objections to it but the Prosecution did not undertake to defend it. In view of the fact there will be several documents dealing solely with medical experiments it will be better to introduce these documents. We have the Afrine affidavit and also the de Wind affidavit which was introduced yesterday at

the time the medical experiments were being dealt with. At no time has the Prosecution had an opportunity to state the reasons why this affidavit and the de Wind affidavit are relevant documents.

THE PRESIDENT: It's certainly no disposition on the part of the Tribunal to be harsh or to deny counsel an opportunity to be heard but we are definitely convinced on the showing made here that any presentation you would make would be futile. We are not referring just to you, but to tell you that now we are not going to adopt any practice here of ruling finally over a protest, counsel want to be heard but you know how the Tribunal feels about this matter and we stated the reasons. And I may say I speak for the entire Tribunal in that regard. Now, if you feel warranted in presenting it and will do it as briefly as you can and if you can persuade us we have committed an error we will not close the door on you.

MR. MINSKOFF: May I just take two minutes of the Tribunal's time?

THE PRESIDENT: Yes, you may do that.

MR. MINSKOFF: If the Court please, the Prosecution would like for the Court with us to go over the relevant portion of the Afrine affidavit which appears in Book 75 and the de Wind affidavit which was offered yesterday for the first time and to be attached to Book 88. With respect to the question of spelling of the name "Bayer", the Prosecution, before it even offered the affidavit in evidence checked very thoroughly as to the existence of any firm in Germany with the spelling B-a-e-r. No such firm was found. We did have the affidavit of Dr. de Wind who spells the firm name correctly as B-a-y-e-r- and mentions specifically I.G. Farben on the letterhead. It might be noted in passing that the French pronunciation of Bayer would be spelled B-a-e-r. The two together do show as submitted, that two sources, completely

independent of each other, one a Dutch doctor and one a French electrical engineer stated through letters concerning one hundred fifty women on the letterhead of I.G., one says "Baer" and one says "Bayer" and the one that says "Bayer" specifically mentions "I.G. Farben Bayer." The responsibility of the defendant Hoerlein for I.G. Farben Bayer is undisputed, as the chief of the chemical bureau and I.G. Farben's Bayer is under his jurisdiction and under his responsibility. When the Prosecution has shown you testimony of two different affiants who have no connection with each other that such letters or series of letters, did exist that, unexplained, standing alone, is competent to show that Farben had engaged in this technical experimentation but it does not stand alone. We ask the Court to consider in connection with books 84 through 83 where there is documentary evidence which shows experiments of Farben through Hoechst to Leverkusen.

THE PRESIDENT: I think your statement just made would justify us in rejecting this evidence as purely emulative.

MR. MINSKOFF: It's ...

THE PRESIDENT: There's no difference about the different types of the experiments, they are all of the same type and the Tribunal would not like to go in all of the fields of experiments and your admission is against your interest. It would justify us in rejecting it on the ground of being cumulative.

MR. MINSKOFF: If Your Honor please, it's submitted to the Court that each separate crime that is committed is relevant to the charges against these defendants and if one crime is committed through the firm at I.G. Farben Hoechst it does not preclude the evidence that I.G. Farben Leverkusen committed similar crimes in the field of medical experimentation. These two letters together show one crime being committed. It stands

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alone and apart. If the Prosecution can prove other similar crimes it isn't cumulative. They are other crimes, all of which are relevant to the issues before this Court.

MR. SPRECHER: Mr. President, on the legal question concerning the company Bayer, Your Honors will recall from the documents that after 1926 when you had the merger that the firm Bayer merged fully and completely with the I.G. Farben and merely had the trade name thereafter, and so there is no question of any independent company, if that could possibly make any difference here.

THE PRESIDENT: Dr. Nelte may close.

DR. NELTE: Mr. President, I wanted to say something about Document NI-12789, which was offered as Exhibit 1833. Mr. Minskoff has just given an argument against Hoerlein. I do not intend to answer that. I merely want to state that the prosecution looked everywhere for letters and for witnesses to find one hundred and fifty Polish women who were supposed to have been bought or rented by some plant. There is no even remotely reliable evidence of this fact, and now they present letters, the original of which could be found, but no, they have affiants give us the contents and when they see that nothing can be accomplished with one document that is the Afrine affidavit then they go on the thirteenth of November and find a new affiant who in his affidavit says nothing, absolutely nothing, which could be considered relevant. I ask you to look at this document. By relevance, as far as I am informed, we mean testimony when, assuming it is true, it can lead to one of the defendants being declared guilty. If you see this document, you will find that paragraph one tells the life history of Mr. de Wied, which is uninteresting for the question under discussion. Then, under number two, he writes, "When I worked in Block 9, I had to bring the soup to Block 10. This was the only block in the whole of Auschwitz I Camp where there were women. Fortunately, I discovered among the female prisoners there, my wife. Although it was strictly forbidden to have any contact with female prisoners," — I shall leave the parenthesis out — "I succeeded, by virtue of the above-mentioned task, in getting into the block almost daily and talking to my wife and other women during the moments when

the SS guards were not present. In this way I could learn for what purpose these women were being kept in Block 10. The block contained five hundred women; a large percentage of them were Dutch. Various experiments were carried out with these women." That is paragraph 2. Gentlemen, there is no one among us who does not condemn the experiments as we have learned of them; but at the moment, the issue is whether anything is said here that can incriminate the defendants in this case. If Mr. de Wind says that there was a block where women were kept and where experiments were carried out, without telling us what the nature of the experiments was, that is completely irrelevant for this case and therefore it must not be accepted.

And now, under paragraph 3, he says, "Because I could observe regularly that the women suffered especially under the experiments, and that deaths occurred, considering the fate of my wife and all the other women and also because as a scientist I wanted to find out what was going on there, I endeavored immediately after the liberation to find in the documents left behind by the SS some information. Among the many incriminating documents I remember one letter particularly. The heading contained, among other things, the words 'I.G. Farben Bayer.' The contents referred to one hundred and fifty women who were to be used for 'special purposes' and the above-mentioned firm was to pay the SS compensation for them. It was also indicated that there was a difference of opinion about the sums to be spent for them. As far as I recall, the I. G. Farben wanted to pay thirty marks per head less than the SS asked." Gentlemen, even if you assume that such a ridiculous letter was written by one Farben agency, this affidavit shows only that the women were engaged in some way for special purposes. It is quite possible—this is not conceded — that some firm got one hundred and fifty women from the camp for a special purpose — for agricultural work or for some other kind of work which has nothing to do with experiments. Do you believe that this witness, who makes his whole attitude quite plain,

would have had any inhibitions against saying that these were experiments if the letter had said so? And if this man had found such a letter among the documents there, why didn't he copy it? Why didn't he keep it? No, gentlemen, this affidavit in the form we have here is irrelevant and I ask that it be rejected.

MR. MINSKOFF: May I say a word, Your Honor?

THE PRESIDENT: No, you may not. The Tribunal has been most liberal in listening to argument. There comes a time when argument must cease. The Tribunal will now rise for its afternoon recess and when we reconvene we shall rule.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

MR. MINSKOFF: If it please the Court, may the prosecution request that in view of the difficulty of getting Mr. Orlik to come back to Mureberg again, would it be possible to have Mr. Orlik testify at the present time and then continue with this witness?

THE PRESIDENT: Just as soon as we rule on the other matter.

MR. MINSKOFF: Thank you, Your Honor.

THE PRESIDENT: Now, the Tribunal might elaborate at great length on the reasons that have prompted it to sustain the objection to this part of the document now under consideration which was the subject of the objections by Dr. Nelte. There is no reason for doing that. We may summarize it by saying that there are so many matters of uncertainty and conjecture about these transcripts of the contents of these letters that the Tribunal feels that they should not be admitted in evidence. We haven't commented upon a very significant phase of the objection and that is the fundamental rule that secondary evidence as to the contents of a written document is not admissible, unless there is a showing that the best evidence cannot be produced. There was at least here a prima facie showing of the existence and the possibility of obtaining those letters. The prosecution has not discharged the responsibility that rests upon it to eliminate that possibility. We add that to the remarks we previously made, and the objection of counsel for the defense to the introduction of that part of the document now under consideration is finally sustained by the Tribunal.

Now, if the witness in the box will kindly step aside that we may bring another witness who is anxious to leave the city, we will permit the prosecution to call its next witness.

(Witness excused).

The record may now show that, by agreement of counsel, Judge Morris is leaving the bench for the balance of the day.

MR. MINSKOFF: May it please the Court, with respect to the ruling

just made, the prosecution would like to say that it has made every effort to obtain those documents and it would like, if possible to reserve its position in the event that the documents are found. It has, for the past two months, made every possible effort to secure the letters which constitute the best evidence. Orders are still pending for Russian examination and Polish examination to find those letters and the prosecution was worried, if it doesn't produce this evidence on its affirmative case, it would not be relevant to the proceeding after it has closed the affirmative case, and it would like the Court's permission to reserve its right to offer those letters later if they are subsequently found.

THE PRESIDENT: Well, the Tribunal would not want to finally rule on a matter of that kind, but I think it proper to say that on a showing of the evidence of the actual letters, the Tribunal would be very reluctant to deny the prosecution the subsequent chance to produce them.

MR. MINSKOFF: Thank you.

THE PRESIDENT: What is the nationality of the witness?

MR. MINSKOFF: Czechoslovakian.

ERICH ORLIK, a witness, took the stand and testified as follows:

THE PRESIDENT: Mr. Witness, you will remain standing for the purpose of being sworn, raise your right hand, say "I" and state your name.

THE WITNESS: I, Erich Orlik.

THE PRESIDENT: Now, I will repeat to you the oath of a witness of your country and, after I have done that, I will ask you to say "I swear".

I swear a pure oath that to all questions asked here before this Tribunal I shall answer only the truth, nothing but the truth, and that knowingly I shall withhold nothing.

You may say "I swear".

THE WITNESS: I swear.

THE PRESIDENT: You may be seated.

BY MR. MINSKOFF:

Q Dr. Orlik, what is your full name?

A Dr. Erich Orlik,

Q And where do you reside?

A In Teplice-Sanov, Czechoslovakia.

Q With respect to your affidavit, Prosecution's Exhibit 1742, are there any corrections or additions that you wish to make at the present time?

A No.

MR. MINSKOFF:

A No further questions for the prosecution, Your Honor. The witness is with the defense.

THE PRESIDENT: The defense may cross examine, but will the prosecutor please give us the book and page reference where we may find that affidavit?

MR. MINSKOFF: This is 81, if Your Honors please. This was added to the book. It is the end of the book, Your Honors.

CROSS EXAMINATION

BY DR. FLAEBCHSNER (Defense Counsel for defendant Buetafisch):

Q Dr. Orlik, in your affidavit you said that in September of 1943 you were sent to a labor camp of Janina Mine. Is that correct?

A Yes.

Q To whom was this camp subordinate?

A The camp was under the main camp Auschwitz. It was a branch of Auschwitz.

Q Is it true then if I say that the camp was under the jurisdiction of the SS?

A The guards were from the SS.

Q In your affidavit you say that a large part of prisoners were employed in the mine. Can you give me the approximate percentage? How many prisoners worked in the mine and how many worked above surface?

A I can only give that approximately. 70% - 75% in the mine and 25% above ground.

Q Do you know, Dr. Orlik, who assigned the prisoners to work?

A The prisoners were assigned to work according to their physical condition. A large part of them, in the beginning when their physical condition was better, were sent to work below ground when the distribution was made by the camp commandant.

Q The camp commander. Do I understand you correctly when you state in your affidavit that was the SS Fuehrer Baumgarten?

A For a while it was SS Unterscharfuehrer Baumgarten.

Q In your affidavit you say that you took care of the food supply. Is it true that kitchen was administered by inmates?

A The kitchen was not administered, but the inmates worked in the kitchen. The supervision was in the hands of a SS man. The administration was in the hands of the Gute Hoffnung Mine administration, and from them we also received rations. Above the inmates' kitchen was the so-called I.G. Farben kitchen, as we called it, which actually administered our kitchen.

Q In your affidavit you say that at one time you complained about the lack of food. May I ask you, Dr. Orlik, to whom you complained?

A I went to my superior. That was an SS man, who passed on my complaint to the head of the kitchen and to the camp commander and the result was that I was given a few slaps and the complaint was taken care of by the kitchen chief.

Q Who was the kitchen chief?

A That was an SS man.

Q Dr. Orlik, in your affidavit you speak about the mine administration to whom you made representations. May I ask you, Doctor, can you give me the names of those people to whom you addressed your complaints?

A Yes. The plant manager, Kroeger. The plant director, Pasterny.

Q What was his name?

A Pasterny, and to the foreman, Marx.

Q Dr. Orlik, do you know that the Janina Mine was subordinate administratively to the Fuerstengrube?

A Yes, the Fuerstengrube was above our administration. We often had inspections from the Fuerstengrube and the camp manager of Fuerstengrube was there a few times.

Q Doctor, you speak of visitors. Do you mean that the visitors mentioned by you in your affidavit were people from the mine administration?

A Yes, people of the mine administration frequently and also frequently SS men.

Q May I come back once more to the food supply in the camp? Under #7, Dr. Orlik, you speak of premium coupons. I should like to ask you from whom did the recipient get these premium coupons?

A From the labor service. That was an inmate.

Q And who determined what inmates should receive premium coupons?

A They were determined by the foreman and the civilians who worked with the inmates in the mine.

Q Can you tell me approximately how many so-called free workers were used besides the inmates?

A In the mine? There was one Polish civilian worker with each two inmates and in charge of a group of about thirty prisoners, working with fifteen civilians, there was one foreman.

Q Dr. Orlik, in your affidavit you say that every Sunday and every holiday people had to work. That meant that these free workers also had to perform work?

A These free miners, of course, had to work too, but they had every other Sunday off. They alternated.

Q I have no further questions.

THE PRESIDENT: Any further interrogation of this witness on cross examination? Since none is requested, the Tribunal is about to excuse

the witness from further attendance. The witness is excused and the Marshal may escort him from the box.

The Marshal may now return to the box the witness who was temporarily excused.

EMIL EHLMANN, a witness, resumed the stand and testified as follows:

THE PRESIDENT: Any further cross examination of this witness?

Dr. Dix, did you desire to say something to the Tribunal at this time?

(Nothing indicated).

BY DR. GATHER (Defense Counsel for defendant Ambros):

Q Mr. President, in view of special circumstances this afternoon, I want to be very brief in the remainder of my cross examination. I expected certain corrections in the figures dealing with capacity of December, 1944. I considered those corrections necessary, but I shall defer them for a later presentation of the defense.

In conclusion, Mr. Witness, I should like to question you in regard to what we have so far established. You confirmed that in the meantime you had an opportunity to recheck your figures which you estimated in Court on the 30th of October, 1947, and which you again lay down in this Exhibit 1819 and that you checked them with the assistance of official documents. Is that correct?

A.- In Exhibit 1819, as I said this morning, I wrote down an explanation of the figures I gave in Court.

Q.- Thank you.

A.- I had an opportunity to compare them with information in Exhibit 1572, which was shown to me, and I discovered that what I stated in Court was very largely correct. With regard to production of other firms independent of Farben, the official figures are higher than what I stated in Court.

Q.- On the basis of the official documents an even more favorable picture results as far as participation of Farben is concerned in the field of chemical warfare agents.

A.- That is true, but I must make one minor reservation. That is, the figures which I gave in Court on the 30th of October are based on total production from the beginning of rearmament to the end of the war. The figures in Exhibit 1572 refer to total production, in the first case, up to the 1st of May, 1943, and, in the second case, up to the 1st of March, 1944. That is, the production between the 1st of March, 1944, and the end of the war is not given in the official figures, but if I compare these three dates - 1st of May, 1943, 1st of March, 1944, and the end of the war - I can establish considerable agreement with my statement in Court on the 30th of October.

Q.- Thank you. Does that also apply to the statements about capacity?

A.- I beg your pardon. In my testimony in Court I testified regarding capacity and I repeated my statements in Exhibit 1819, there's nothing to be changed there.

Q.- Thank you.

I then have to deal with only one more point. On page 3A of your affidavit I notice that you emphasize, and I quote:

A.- Are you talking about 1819 or 1820?

Q.- 1819. NY-12725. I quote:

"In my above calculations, I listed the firm Orgacid as not belonging to Farben."

Witness, why did you not list Orgacid as belonging to Farben?

A.- Because it is absolutely clear to me that the firm Orgacid did not belong to Farben and I made this remark here only at the request of the interrogator. I myself would not have said that because it was obvious to me.

Q.- Witness, why is it clear to you?

A.- Orgacid and thus the Amendorf plant is a Reich-owned plant. Secondly, this Reich-owned plant was leased for operation to the firm Orgacid. Third, the owners of Orgacid was the chemical factory Buckau, later merged with the Goldschmidt firm in Essen, 50% participation and the firm Degen, Berlin, 50% participation. The chairman of the Aufsichtsrat was appointed by the Auer Company. Other members of the Aufsichtsrat were members of the Chemische Fabrik Buckau, the OKI, and the Montan G.m.b.H. Farben was not represented in the Aufsichtsrat. The manager of the Orgacid firm, was Dr. Engelhardt, Berlin, formerly an employee of the Auer Company. The plant leader of the Orgacid plant, Dr. Moellnau, came from the Buckau plant. My office, which took care of the Orgacid plant in an administrative sense in all questions - commercial, technical or production questions - always exclusively dealt with the management of Orgacid, that is primarily with the business manager, Dr. Engelhardt and, after he left the firm, with the plant leader, Dr. Moellnau. All instructions and orders given by my office to the Orgacid firm were sent to these men. The Orgacid firm was responsible to my office for the final products to be produced in the plant.

Q.- Witness, these statements are based on your knowledge as a result of your office activity. Did you ever learn anything about the legal structure of the enterprise? For instance, with the aid of an excerpt from the Commercial Register?

A.- No, that is not necessary for me.

Q.- Witness, in order to crystallize your conception, I should like to put to you an excerpt from the Commercial Register of Orgacid and a note which originates from a Russian office, the presidency of the Province of Saxony, regarding the commercial legal structure of Orgacid. I should like to mark these two documents, for identification, as Ambros # 16.

MR. SPRECHER: Mr. President, I think this is merely a repeat performance of a long line of similar performances. There is nothing in this affidavit, except this one sentence, that has to do with why he didn't list Orgacid, or it only says he didn't include Orgacid. He didn't give his reasons for not including it. He has given a long list of reasons now and I have not objected on the ground that that was clearly something the witness put in that might be considered as purely defense testimony, and now Dr. Gather repeats, putting in, after the witness has said that he has never seen these legal documents and has no knowledge of them, his defense material, and I'm wondering how many more times we have to have repetitions of that kind of thing.

THE PRESIDENT: There is nothing before the Tribunal. The defense counsel has simply passed a document to the witness. Let's wait for the question and then we will permit you to make an objection, if you wish too.

BY DR. GATHER:

Q.- Witness, please look at these two documents. Do you see in them a confirmation of your opinion or a deviation from your opinion?

A.- I find confirmation of it.

MR. SPRECHER: Well, I think it's so useless that it's probably unworthy of the objection. I will withdraw it.

DR. GATHER: Mr. President, if the prosecution considers this affair as unimportant perhaps we can reach some sort of stipulation that the firm Orgacid should not be mentioned specifically since, in this connec-

Court No. VI, Case VI.

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tion, it might be considered irrelevant in this connection.

MR. SPRECHER: I was referring to your question and not to the substantive question. As far as the substantive stipulation is concerned, I think there is considerable possibility, but this is not the time to take it up.

THE PRESIDENT: There is nothing really before the Tribunal and the somewhat anticipatory observation of counsel for the prosecution does seem to be well taken. The witness has already foreclosed the inquiry by stating in the first instance that he did not know anything about this register or didn't deem it necessary for his conclusions to consult it. Under the circumstances, it would serve no good purpose to interrogate him about what the register may show. If it shows something that is helpful to the defense, it would be proper in their case in chief.

BY DR. GATHER:

Q.- Witness, do you maintain your assertion regarding Orgacid even if I put to you a document of the prosecution, Document NI-5669, Exhibit..... I'm sorry. I don't know the exhibit number at the moment. It is Exhibit 621, in Document Book 35. It's a file note of the Central Finance Administration regarding Orgacid and bears the remark:

"Technical operation Farben" and then, in brackets, "Confidential".

MR. SPRECHER: Mr. President, isn't this argumentative? The witness has stated that he agrees with Counsel, and now Counsel says, 'If I were to show you some independent proof in this record, would you still say that you agree with me?'

THE PRESIDENT: That objection is well taken. The witness has supported the purpose of Counsel's inquiry. There seems to be no reason. It is more or less of an argument with the witness to sustain his own position, which on the face of it appears to be favorable to the inquiry that Counsel is addressing to him.

The objection is sustained.

DR. GATHER: Then I have no further questions to the witness.

THE PRESIDENT: Any further cross examination? If there is no request for further cross examination of the witness-- I will inquire if the Prosecution has any further questions.

MR. SPRECHER: Yes, we have a few.

REDIRECT EXAMINATION

BY MR. SPRECHER:

1. Witness, with respect to the Amendorf plant of the Orgacid company, tell us whether the Orgacid could have produced the final product without the assistance of I.G.

DR. GATHER: Objection. Mr. President, I cannot see any connection of the Prosecutor's question in regard to Orgacid. I mean any connection with the affidavit.

THE PRESIDENT: What is your position, Mr. Prosecutor?

MR. SPRECHER: Well, the witness was asked why he didn't include Orgacid, and he mentioned a number of things concerning technical management and a number of other things. It is directly within the scope of Dr. Gather's examination.

THE PRESIDENT: I am doubtful of that. Now that opens up an inquiry as to why he maybe should have included it, but is your question calculated to produce that kind of effect? Whether or not they could have manufactured a product without the aid of Farben isn't necessarily related to the stated

purposes of your inquiry.

MR. SPRECHER: Well, I will withdraw the question, and I think the propriety of that question will become apparent after the next question or two.

THE PRESIDENT: Very well.

BY MR. SPRECHER:

Q. In your official capacity, did you come to find out whether or not Orgacid was able to produce the intermediate products required for poison gas at Ammendorf without the assistance of I.G.?

A. The preliminary --

THE PRESIDENT: Just a moment. Just a moment.

DR. GATHER: Objection. Mr. President, I still cannot see the connection with the affidavit of the witness.

MR. SPRECHER: Pardon me, Dr. Gather and Mr. President, the question here is not what is in his affidavit directly. The question is whether or not on redirect examination I am going into a subject directly related to what Dr. Gather went into on cross examination.

THE PRESIDENT: Counsel for the Prosecution, if the Tribunal can perceive the purpose of your inquiry, it is rather wide of the mark. It might be observed that they couldn't produce their product without electricity or water or transportation facilities. You don't mean those things. Why don't you ask your question directly, and we can save some time perhaps.

MR. SPRECHER: All right, I will ask -- I thought that I was saving time, as a matter of fact. I will try it with a lot of foundation.

BY MR. SPRECHER:

Q. Do you know whether any technical engineers from Farben were transferred to Orgacid just after Orgacid was formed?

A. Yes.

Q. Can you name any of them?

A. For example, Oberingenieur Lorenzer. May I add 2 more sentences? These gentlemen were sent from Farben in order to plan the preliminary steps necessary for the production of Lost, to help in the construction, and also

to start off, that is, to put the plant into operation in order to train the Orgacid personnel. After the Orgacid personnel was able to manage these plants -- that is too much -- departments, then the help of the Farben men was no longer necessary.

Q. Do you recall the time that help was given?

A. I personally can, of course, only speak from the time on which I entered the Army Ordnance Office 1 February 1935. The assignment to build the plants was given on 10 December 1934, but, after all, up to the year 1936 the plant was under construction. Later there were disturbances in the operation, and Farben again had to be called on for help. Also in approximately 1937 a pilot plant for Nitrogen Lost was built and there were exactly the same conditions as in the preliminary-step after they had been constructed. I believe I am really in a position to speak about the subject.

Q. Now with respect to the production of D Lost at Trostberg Gendorf, the so-called Gendorf plant, did I. G. encounter technical difficulties in the production there in the years 1942 and 1943?

A. You know that the preliminary work for carrying out the technical process on a large scale --

Q. Excuse me, witness. Yes, but can you tell me whether there were technical difficulties? That is a fairly simple question.

A. Yes.

Q. Thank you very much. Now when was the D Lost process fully developed? Fully developed. If you can give us a specific time or just a near time, please do that and do it shortly.

A. On the basis of our discussion, this morning, that was largely clarified that the version into large-scale operation was in September and October, 1939.

Q. Was the D Lost process completely developed before the year 1942?

A. In the opinion of the responsible technical experts of Farben, it was thought that this large-scale operation in Gendorf, which was planned

for September and October, would deliver a product suitable for the conditions of the Lehrmacht, but as practice showed, it was unfortunately not the case from the point of view of the military.

Q. Well, whether from the point of view of the military or some other point of view, was the D Lost process fully developed by 1942?

THE PRESIDENT: Well, he has probably answered that question. It perhaps is a question that doesn't call for a categorical yes or no answer. He has said that it was developed in a sense, but not in a satisfactory sense, as we understand him, and that is probably an answer.

BY MR. SPRECHER:

Q. It was developed sufficiently satisfactorily at least by 1942 so that capacities and capacity production were treated by you quite often in your daily official duties? Is that correct or not?

A. Yes.

Q. Now tell the Court whether or not it is your testimony that between 1 September 1939 and 26 September 1939 those technical difficulties in the production of D Lost were overcome so that then for the first time there could be planning of production capacities with respect to D Lost? Is that your testimony?

A. I have already said that the development of a large-scale process was carried out at Leverkusen, that the experiments there were thought to have led to the result that a process was arrived at that one could take the chance of putting into large-scale production.

Q. When was that?

A. As I have already told you, and as I thought I explained this morning, that was about September or October, 1939. This large-scale plant was built; that was no insignificant matter, and when in the year 1943 the plant was for the first time put into operation in part, it was shown that this was a big fiasco inasmuch as the product was completely useless. After a very short time it disintegrated and was no longer useable. And if I may add something, that is shown quite clearly by the document which was shown to me. Exhibit 1572 —

Q. Well --

A. -- which states that --

THE PRESIDENT: Mr. Witness, you have answered the question, and I think Counsel, that the Tribunal understands what the witness is trying to say on that subject.

THE WITNESS: Mr. President, I don't believe I answered fully.

THE PRESIDENT: Well, the Tribunal is satisfied with your answer, and, after all, if Counsel wants to know more about it, he may ask you.
BY MR. SPRECHER:

1. Perhaps you didn't understand the question. The question was merely whether or not between 1 September 1939 and 26 September 1939 there was anything so far as you know, which occurred with respect to the technical difficulties in producing D Lost that made it possible at that time to enter into a contract in a way which was not possible before 1 September 1939?

THE PRESIDENT: Now, Counsel, we have been over that territory pretty fully, and I think the Tribunal could state for the record what this witness has testified, if it was necessary to do it on that subject.

MR. SPRECHER: I hope the record is that clear, Mr. President.

THE PRESIDENT: I think it is. I think it is. I can assure you that it is.

BY MR. SPRECHER:

2. With respect to the Gendorf plant, tell us whether or not in your knowledge from time to time there were changes in the building plans of Gendorf so that part of the plant would be completed at one time and referred to as being completed, and then other parts would be projected and completed, or whether it was just one final plant?

A. To explain matters to the Court, I should like to say the plant was built -- as we used to say "on the green meadow". As the production program was very extensive, a relatively high investment cost was necessary, about one hundred thirty million. It is obvious that such a plant cannot be absolutely finished on a certain set date and everything can start at once.

We proceed step by step. I don't know whether I have answered your question.

Q. Would it be correct to say then that, simply stated, parts of the plant were completed before other parts were completed insofar as operation is concerned? Is that right?

A. Yes. I explained that this morning.

MR. SPRECHER: Thank you very much.

THE PRESIDENT: Any further interrogation of this witness?

Mr. Witness, you are excused from further attendance, and the Marshal will escort you from the courtroom.

DR. DIX: Dix for Schneider. I have only two questions. The first question is directed to yesterday's presentation of documents in regard to Kalle and Company, and DAG. I wanted to ask the Prosecution whether it is correct that in this connection they only presented documents to Count III of the Indictment with regard to Kalle and Company and not in regard to Dag. And I emphasize again relating to Count III.

MR. SPRECHER: I think Dr. Dix has stated, what happened, correctly, but may I recapitulate just to be sure, because it is probably rather important. I have already spoken to other Defense Counsel in this regard. We have said we were not going to offer any proof with respect to the slave labor practices of DAG, although we thought legally we were entitled to, and we have submitted none. With respect to Kalle and Company, we did submit documents bearing on Count III.

DR. DIX: Then there is one more thing. In regard to the chart in Book 69, the distribution of Farben plants, I had pointed out a few weeks ago that the left column had not been corrected. I then conferred with the Prosecution about this, and it was discussed that in the files of the Tribunal a correction would be appended in regard to the left column. The chart was offered into evidence on 9 October 1947 as Exhibit No. 847 by the Prosecution, and I wanted to ask whether this correction was made.

MR. SPRECHER: Of course, both exhibits are before you. I think Dr. Dix's request was that since we used a copy of the one exhibit in a subsequent document book without the copy of the other book, we should furnish

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MR. SPRECHER: Of course, both exhibits are before you. I think Dr. Dix's request was that since we used a copy of the one exhibit in a subsequent document book without the copy of the other book, we should furnish

that to your Honors. Mr. Van Street undertook to do that, and I can only say I will check again to see if that has been given to the Judges; and in any event they have heard here discussions so they will know what should go together.

DR. DIX: At that time I had made the suggestion that the left column of this chart should be covered up. There were technical difficulties, I cannot judge of what nature, and Mr. Van Street suggested that this correction should only be appended to the document which is sufficient, but which is necessary, for otherwise one does not know where it belongs.

THE PRESIDENT: Very well.

DR. DIX: And I ask you kindly whether this has been attached or not?

THE PRESIDENT: I am not at liberty at this moment to say, but I think we may understand that if it has not been done, the Prosecution will see that it is done. Is that correct, Mr. Spraher?

MR. SPREHGER: Yes, Mr. President. It has already been done in connection with one part of the presentation.

THE PRESIDENT: Yes.

MR. SPREHGER: But it has not been done in connection with Count III.

THE PRESIDENT: Yes.

MR. SPREHGER: And we will try to see that your document books on Count III also have the additional affidavit.

THE PRESIDENT: Very well.

Now, gentlemen, we are about to recess for an extended period, and this would appear to be a proper time to recheck some matters to see that we clearly understand the situation. Did Counsel have something to say before we approach that subject?

DR. SILCHER: Mr. President, if I understood Your Honors correctly this morning, the matter of the Defense's offering individual documents for the Language Division should still be clarified. This would facilitate the practical work of the Defense and would be very important for us. I should like to ask you whether this point has already been clarified.

THE PRESIDENT: It has not. The President tried to contact the director of the agency at noon, and he was away at lunch, but this will be a special order of business with us tomorrow, and I have made a memorandum of it to get busy on the subject in the morning.

Can the Prosecution offer us any suggestion as to that problem?

MR. SPRECHER: Well...not precisely. I can't see just exactly how the problem arose, except that it has been customary during the Defense cases to put a certain pressure on the translation of the more important documents, and those naturally would be those which were already grouped in document books. Apart from that, I can't be of much help except to say this. The mere processing of individual documents takes a very small fraction of the time. It is the final assembling of those documents, and seeing that proper copies are made, and that they are in the proper order, and that the pages are marked that takes a tremendous amount of time. And I only mention that so that the Defense won't be caught as the Prosecution was, a number of times, without having its document books ready.

THE PRESIDENT: We shall get in touch with the director of the division tomorrow and will communicate with Dr. Boettcher so that counsel is advised as to what arrangements have been made. We will do all that we can to facilitate the processing of your documents and see that you are promptly informed of the results of our conference.

DR. SILCHER: Thank you very much.

THE PRESIDENT: Now, there are two or three matters I should like to mention before we recess. The Tribunal assumes that Defense counsel are familiar with the rules of the Tribunal with reference to the time allotted for opening statements; that is, that you are entitled to two days. May we assume also that you will be able to work out a schedule and a division of time among yourselves without the intervention of the Tribunal? Do you think that can be done, Dr. Boettcher?

DR. BOETTCHER: Mr. President, we shall discuss these questions tomorrow in a conference of the Defense counsel which has already been ordered.

THE PRESIDENT: It has also occurred to us that while we have indicated that we are about to adjourn until the 18th of December, it is perfectly agreeable with the Tribunal to reconvene on the 17th of December to make one final check as to any problems that may have

arisen in the meantime so that we will be prepared on the day following, to wit, the 18th of December, to take up the matter of the opening statements.

Does counsel think that might be desirable? If there are no problems, we can meet very briefly on the 17th and then recess until the next day, so we will not change the schedule so far as the opening statements are concerned. But some problems may arise that you would wish to discuss with the Tribunal before the day of the opening statements.

DR. BOETSCHER: Mr. President, Mr. Sorecher and I agree that if problems should arise we should meet on the 17th, at a time that is convenient to the Tribunal. May I ask you, Mr. President, whether, in the meantime, we have an opportunity to speak to the Tribunal in chambers if some serious question should arise which necessitates the assistance of the Tribunal?

THE PRESIDENT: Yes; certainly you may do that; whether the Tribunal is in recess or in session we will be very happy to receive you and try to help you work out your problems.

Now we should like to repeat again that it is important that you get the manuscript of your opening statements to the processing office in sufficient time for the translation and the mimeographing of them, so that they will be available for your use and ours on the day of the opening statements. Please keep that matter in mind.

Now, just one thing further that we think of, and that is that it is highly important that the Prosecution furnish us, as soon as possible, with a complete list of the witnesses outstanding who are subject to cross-examination, and it will facilitate matters for us if, in addition to the names of the witnesses, you can give us, as you have in the past, the exhibit numbers that are involved. And it is likewise equally important that counsel for the Defense let us know whether or not these witnesses are all to be produced for cross-examination or whether part of them may be waived, or some other

method of interrogatories or the like may be used in lieu of the cross-examination. We had intended, as we have indicated before, before recessing today, to dictate on the record an assignment of these witnesses to the Commissioner for cross-examination. Instead of doing it that way, we shall enter a formal order and file it in the Secretary General's office so that it will reach both of you just as soon as we have the necessary information.

We have consulted briefly with the Commissioner with reference to the performance of his duties and have contacted the administrative agencies. He will hold his sessions in some courtroom where proper facilities for reporting and translating will be provided.

So far as this Tribunal is concerned, counsel for the Defense may be free to ask that the defendants who are interested in the cross-examination be permitted to attend, and if you will communicate with the Marshal's office in advance—as the schedule is worked out by the Commissioner—arrangements will be made to have such of the defendants as are interested in that phase of the cross-examination present.

Are there any other questions now, before we do recess, that counsel for the Prosecution or the Defense wish to suggest?

DR. DIX (Rudolf): Mr. President, since you are going to discuss matters with the chief of the Language Division with regard to documents, then I should like to ask you, because of experiences that I had, to kindly agree with him on the shortest possible time which is needed by the translation department and mimeographing department to get the opening statements ready for the Tribunal. There is a rule which was made sometime that it necessitates about two weeks for the two departments to do their work. In the Flick trial we did not need that much time.

Since the opening statements cannot be very long, I should assume that if both departments work to the fullest of their ability two days should be sufficient. At such a time people just have to get down and do the work...

THE PRESIDENT: We are quite apprehensive, counsel, that you put a pretty low minimum on the time that is necessary; but I shall discuss that with the Director of the Language Department and see that Dr. Goettcher is advised in that respect also, when I talk to him tomorrow.

DR. DIX: Thank you very much.

MR. SPEECHER: Mr. President, what is your wish as to how both the Defense and the Prosecution shall communicate to you or to the Commissioner of any progress made or any difficulties encountered in connection with the affiants with respect to whom there are outstanding problem. For example, assuming we reach a stipulation with respect to certain affiants and therefore do not have to bring them, do you want us to send you a joint motion to the effect that that be received as a part of the record?

THE PRESIDENT: You probably had better handle that directly with the Commissioner, in view of the fact that the order will be that all of the cross-examinations of the main witnesses are transferred to him. And then he can embrace it in his report to the Tribunal that in the case of so-and-so the cross-examination was waived, and it will be then made part of the record of this proceeding. We, I may say, intend to have a conference with the Commissioner tomorrow and talk over some of the routine details of the operation; but I think perhaps that answers the question.

Then have this clearly in mind: that we are about to recess until December 17; that we will convene as usual at nine-thirty on the morning of that day to take account of any matters that may have arisen in the meantime; that as soon as those matters are disposed of, we will recess for the day, and that on December 18 and 19 we shall hear the opening statements of the defendants.

The Tribunal will now be in recess until nine-thirty o'clock, December 17th.

(The Tribunal adjourned until 17 December 1947, at 0930 hours.)

CERTIFICATE OF COMMISSIONER

I, JAMES G. MULROY, AGO #B-397399, hereby certify that I am a duly appointed, qualified and acting Commissioner, to take the testimony of witnesses under Order of Tribunal No. 6, in the case of United States of America vs Krauch et al; that pursuant to said Order, upon the dates hereinafter listed, I have supervised the taking of testimony of witnesses examined before me, and said testimony has heretofore been properly recorded, reported and filed in the Office of the Secretary General and now constitutes a part of the official transcript of proceedings in the above case; and the dates of such examinations, names of witnesses and pages of the said official transcript are as follows:

<u>Date</u>	<u>Name of Witness</u>	<u>Official Transcript</u>
12/15 December, 1947	Paul H. Haerd	4577-4595
15 December, 1947	Karl Wolff	4596-4657
15 December, 1947	Gustav Schlotterer	" "
17 December, 1947	Kurt Krugger	4692-4710
9 January, 1948	Adolf Hoehle	4946-5024
9 January, 1948	Willi Dagne	" "
9 January, 1948	Karl Amend	" "
17 January, 1948	Alfred Zaun	5470-5512
17 January, 1948	Perry Broad	" "
6 February, 1948	Josef Joham	6826-6881
7 February, 1948	Franz Rottenberg	6957-6979
26 February, 1948	Noack Treister	7696-7732
27-28 February, 1948	Rene Balandier	7925-7963
16 March, 1948	Fritz Goernert	9288-9305
16-17 March, 1948	Gerhard Ritter	9305-9358
17 March, 1948	Heinrich Van Beek	9359-9376
18 March, 1948	Dr. Charles Bendel	9584-9616b

I further certify that the aforesaid transcript pages comprise a full, true and correct report of said proceedings, testimony and evidence heard and recorded at proceedings before said Commissioner.

Dated at Nurnberg, Germany, March 31, 1948.

JAMES G. MULROY
Commissioner of Tribunal No. 6

James G. Mulroy

Official Transcript of Commission for American
Military Tribunal VI in the matter of the United
States of America, against Carl Krauch, et al,
defendants, sitting at Nurnberg, Germany, on 12
December 1947, 1330, Commissioner Mulroy presiding.

THE MARSHAL: The Honorable, the Commissioner of Military
Tribunal VI.

Commission for Military Tribunal VI is now in session.
God save the United States of America and this honorable
Commission.

There will be order in the court.

THE COMMISSIONER: Mr. Marshal, you may report the presence
of the defendants, if any.

THE MARSHAL: Sir, there are no defendants present in
the court.

THE COMMISSIONER: Before any other proceedings are had,
and for the purpose of the record, I will state that, subject
to objection by counsel of any party of interest, the record
to be made here will show that on the 12th day of December,
1947, at 1330 hours, in compliance with an order of United
States Military Tribunal #6, dated the 8th of December, 1947,
heretofore filed in the office of the Secretary General for
Military Tribunals at Nurnberg, Germany, James G. Mulroy,
the duly appointed, qualified and acting Commissioner of
said Tribunal, at the Palace of Justice, Nurnberg, Germany,
commenced the taking of testimony of witnesses in the United
States of America versus Carl Krauch and others, and that
due and timely notice thereof was served upon both prosecution
and upon defense counsel representing all of the defendants.

Mr. Prosecutor, at the recent conference had between the
Prosecution and Defense Counsel there were certain agreements
made as to the waivers of witnesses designated in the order
of the Tribunal requiring the testimony of those witnesses to
be taken before the Commissioner. I should like, at this time,

for the Counsel for the Defense and Counsel for the Prosecution to stipulate that the taking of evidence from these witnesses is waived. The witnesses referred to are:

Dietzsch, Arthur,
Frank-Fahle, Guenther
Hoven, Waldemar
Lengyel, Olga
Loebner, Walter
Marek, Iri
Rosenberg, Herbert
Ruther, Hermann
Speer, Albert
Struss, Ernst
Elbau, Alfred
Hauptmann, Kurt.

I should like to hear from the Prosecution in regard to these waivers. Is it your understanding, Mr. Sprecher, that these men are not be examined by the Counsel?

MR. SPRECHER: That's my understanding and it's so agreed by the prosecution.

THE COMMISSIONER: Representing all of the defendants, do you agree to that?

DR. MUELLER: Yes, I do.

THE COMMISSIONER: In that case, no evidence will be required by the Commissioner at any of these hearings.

The Marshal has reported that none of the defendants in this case are present in Court. I should like Mr. Mueller to signify his agreement to this statement: All defendants waive any right to be present in today's taking of evidence and all Counsel for defendants who desire to cross examine witnesses are present.

Do you signify your agreement?

DR. MUELLER: I signify my agreement.

THE COMMISSIONER: Before the examination of witnesses commences, is there any other matter which either the Prosecution or the Defense desire to enter upon the record?

MR. SPRINGER: There's one, Mr. Commissioner.

In the memorandum of the 10th of December, which I sent to you, Mr. Commissioner, with copies to Defense Counsel Dr. Boettcher and Dr. Mueller, I indicated, under paragraph 21, Rudolf Marck, that the address of the affiant was not Germany. That is correct. However, I confused the Marck listed there with another Marck who has been waived and that was the reason for my comment below:

"Very difficult to bring any further Czech witnesses. Suggest further immediate interrogatories."

Since the affiant Rudolf Marck is in Germany, the prosecution will make every effort to bring him here and we shall make suggestions to you, after consulting the Defense, at the earliest possible moment.

THE COMMISSIONER: Very well, Mr. Sprecher.

Is there anything else? Is there anything else from you, Mr. Sprecher?

MR. SPRINGER: Nothing from the prosecution.

DR. MUELLER: Nothing from the defense.

THE COMMISSIONER: Very well, Mr. Prosecutor. You may call the first witness.

PAUL H. HAENI, a witness, took the stand and testified as follows:

THE COMMISSIONER: Witness, you will remain standing, raise your right hand, say "I" and pronounce your full name.

THE WITNESS: I, Paul H. Haeni.

THE PRESIDENT: And repeat after me:

"I, on this Bible, swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing."

(The witness repeated the oath.)

You will place your hand upon the Bible.

Witness, you may be seated.

I should like to ask you if you are familiar with the procedure in taking evidence?

THE WITNESS: Yes, Your Honor.

THE COMMISSIONER: Then it will be unnecessary for me to explain to you the lights, but I will call to your attention that you are perfectly free to testify fully and freely in response to any questions that are asked you. However, it is the desire of the Tribunal under which this Commissioner is working that you make your answers brief and direct and avoid unnecessary comment. You can rest assured that if your answers are deemed incomplete, counsel will ask another question.

The witness is with the Prosecution.

MR. SPECHER:

Mr. Commissioner, the witness, Paul Haeni, has been called pursuant to request of Defense Counsel in connection with three affidavits which he executed. With your permission, I would like merely to make the record clear about that.

THE COMMISSIONER: You may proceed, Mr. Sprecher.

MR. SPECHER: The exhibits in question are Exhibit 1765, Document (NI 12073; Exhibit 1767, NI 12203; and Exhibit 1793, NI 9913-B.

Now, Mr. Examiner, the prosecution's fourth memorandum listing affidants, as an additional exhibit under the name of the witness Paul Haeni there is, namely, Exhibit 1799, NI 11936. Dr. Heintzeler and Dr. Mueller, who are present in the commission hearing today, have informed me that is merely a certificate by the witness Haeni and that they do not desire cross examination with respect to that last

Document, Exhibit 1799.

Is that correct, Dr. Heintzeler?

DR. HEINTZELER: Yes.

THE COMMISSIONER: May I ask, Mr. Sprecher, what books are the other exhibits contained in? 82 and 83, isn't it?

MR. SPRECHER: No, Mr. Examiner, Exhibit 1765 is in.... I beg your pardon. You're correct, I was looking at the page number.

THE COMMISSIONER: Will you give me the page number of 1765?

MR. SPRECHER: Yes. Document Book 82, page 85 English, page 93 German. And shall I give you the next?

THE COMMISSIONER: Yes, please.

MR. SPRECHER: Exhibit 1767 - Document Book 82, English page 89, German page 95. And Exhibit 1793, Document Book 83, English page 100, German page 105.

THE COMMISSIONER: 100, did you say?

MR. SPRECHER: Yes.

THE COMMISSIONER: Very well. You may proceed.

DIRECT EXAMINATION

BY MR. SPRECHER:

Q Would you state again your full name for the record?

A Paul H. Haeni.

Q Mr. Haeni, you are a Swiss citizen?

A That's right.

Q And you are now employed by the Office of Chief of Counsel for War Crimes as a research analyst, is that right?

A That's right.

Q How long have you been so employed?

A I have been employed since August 20, 1946.

Q And your present residence is now in Nuernberg?

A That's right.

Q Mr. Haeni, do you have copies in the English or the German of the documents which I have just mentioned?

A I have both of them, English and German.

MR. SPEECHER: I might say, Dr. Heintzeler, if you prefer when cross examination comes, Mr. Haeni is willing to testify in the German, if you prefer, unless the Commissioner has some objection.

THE COMMISSIONER: No. He may testify in any language which is most easy for him.

BY MR. SPEECHER:

Q Now, Mr. Haeni, pursuant to instructions of a representative of the Farben Trial Team, you undertook certain studies which found their way into these affidavits. Is that correct?

A That is correct.

Q Have you reviewed these three exhibits in question in the last few days, in order

A Yes, I did, in the last week.

Q Have you discovered, during your investigations since the time you executed these affidavits, that you made any incorrect statements or any errors?

A No, I did not.

MR. SPEECHER: No further questions by the prosecution.

THE COMMISSIONER: You may examine, Dr. Heintzeler.

CROSS EXAMINATION

DR. HEINTZELER: Representing Counsel Berndt, who is absent, for the defendant Mann.

THE COMMISSIONER: You may proceed, Doctor.

BY DR. HEINTZELER:

Mr. Commissioner, may I be permitted first of all to

ask a few questions of the witness in regard to his statement, NI 12073, which is Exhibit 1765. Document Book 82, page 85 English and page 93 of the German.

Q Witness, under II of this statement, you say that the three above-mentioned firms were represented in the Board of Directors (Verwaltungsrat) of Degesch as follows: I.G. Farben - then there are five names listed

THE COMMISSIONER: I beg your pardon, Counsel. I did not get the exhibit that you are reading from. I did not get the number.

DR. HEINTZLER: It is Exhibit #1765.

THE COMMISSIONER: Thank you.

BY DR. HEINTZLER:

Q Witness, under II, you say that the three above-mentioned firms were represented in the Board of Directors (Verwaltungsrat) of Degesch as follows: I.G. Farben, then five names are listed: Degussa, where four names are listed; Th. Goldschmidt, where one name is listed; and then you say "others, Dr. Heerdt." May I ask you, witness, to explain whom Dr. Heerdt represented in the Verwaltungsrat Degesch?

A It is my opinion that his membership in the Verwaltungsrat might be explained by the fact that the Degesch itself, recognizing Dr. Heerdt's work as plant manager of Lingler firm and his position as holder of the patent of Degesch, and that by reason of these merits he was granted the vote and the seat in the Verwaltungsrat of Degesch.

Q Do you agree with me, witness, that the members of a Verwaltungsrat can only be appointed by the partners and not by the concern itself?

A That is correct.

Q Is it not true then that every member of the

Verwaltungsrat must have been appointed by one of the partners?

A Every member of the Verwaltungsrat has to be suggested, either by one of the partners concerned or by all of the partners.

Q If I put to you that the Degussa itself, as far as I know, considered Dr. Heerdt as a member of the Verwaltungsrat that they appointed themselves, does that correspond with the results of your investigation or does it not?

A As I mentioned under II, I made my statements on the basis of documents, and in the documents that I studied nothing was mentioned as to who suggested Dr. Heerdt to become a member of the Verwaltungsrat.

Q. Then, witness, may I ask you something about Roman numeral III in your affidavit? There you say that up to 1942 Degesch owned 85% of the Testa capital. Degesch, however, ceded one-half of its holdings to its subsidiary firm, Heerdt and Lingler, so that the books of Degesch show only a participation of 27.5% of the capital of Testa.

In this connection, Mr. Witness, I should like to point out to you the document presented by the prosecution, NI-7958, exhibit 1785, which may be found in document book 83, in the German text on page 65 and in the English on page 42. It seems to be on page 42 of the English.

THE COMMISSIONER: May I ask, counsel, what is the document book? Is that document book 82?

DR. HEINTZELER: No, that is document book 83, exhibit 1785. It seems to be on page 42 of the English document book.

THE COMMISSIONER: That is correct, yes, 1785, it shows 7958, 7958. On page 42 of document book 83 it shows 7958.

DR. HEINTZELER: 7958, yes, that is correct. It is exhibit 1785.

THE COMMISSIONER: Very well.

Q. (By Dr. Heintzeler) This document is an annual report of the Nali Association, Heerdt and Lingler G.m.b.H. for 1942 and on page 7 of the original the following notation can be seen: "A fundamental change arose from the reorganization of the relationship of Degesch to Testa, Hamburg, since Degesch had transferred its shares in Testa to Dr. Tesch and had granted him full sales and application rights and so on." The rest is not of interest in this connection. The last sentence is essential, according to which Degesch had transferred its shares in Testa to Dr. Tesch up to 1942. This is not in accordance with what you, Mr. Witness, have stated under Roman numeral III of your statement 1765. May I ask you to tell me about your opinion of this subject?

A. My statement is based upon the auditor's reports of the Degesch as you can see, in which it is mentioned that the Degesch owned 55% of the Testa capital originally. From this it had ceded one-half to Heardt and Lingler in the meantime and the auditor's reports and the balance sheets prove only a participation of 27.5% on the books. It is possible, however, that in the case mentioned by you the Heli Association can claim properly that the Degesch transferred the entire shares back to Dr. Testa because the cession of one-half of the participation might perhaps have been only an internal or administrative transaction between Degesch and Heli.

Q. Witness, you say under number 3, that is Arabic 3, that you had looked and checked the auditors' reports for the years 1939 to 1942. Is it possible that you saw the auditors' reports which were drafted in 1942 and that this last report would have transferred only to 1941 and would leave the possibility open that the Degesch might have transferred in 1942 its entire shares to Testa as can be seen from the other documents?

A. The auditors' report mentioned under number 3 from 1942 is the report for 1942 which was used by the Allgemeine Revisionen und Verwaltungsgesellschaft in Frankfurt in 1943.

Q. Then you see no possibility to clear up this contradiction?

A. Just a minute. In regard to your statement about the sale of the shares to Testa, then I state quite distinctly in number 3 that until 1942 Degesch owned 55% of the Testa shares, of the Testa capital.

Q. Mr. Witness, I don't believe it does explain the contradiction, because the Heli report that I showed to you actually refers to 1942, or do you want to say by your statement just now, that the participation of 55% applied to only a part of 1942?

A. The participation of 55% was fixed on the basis of a new contract which was concluded during 1942 and was transferred back and sold back to Dr. Tesch in Hamburg on the basis of this contract.

Q. You were able to find that from your documents?

A. Yes, that is right.

Q. That explains the contradiction. Mr. Witness, I turn now to your affidavit NI-12203, which is exhibit number 1767. It may be found in document book B2 right after the statement we were just speaking about. In this affidavit you state that in 1942 Farben received an average dividend of approximately 200% and that in 1943 also a dividend of 200%. I should like to ask you a preliminary preliminary question in this connection. Do you agree with me, witness, that generally speaking under dividend one understands the compensation for making available a certain share of capital?

A. Correct.

THE COMMISSIONER: This hearing will be in recess for a few moments if you please, counsel.

(Recess was taken.)

THE COMMISSIONER: You may proceed.

Q. (By Dr. Heintzler) Witness, I should like to draw your attention to the contract of the three partners forming Degesch from 1936. The contract which was submitted by the prosecution is document 6363, exhibit 1965. It is found in document book 82 and it is the document immediately preceding your first statement that we treated this afternoon. Under paragraph 11 of that contract it is stated that the products laid down in paragraph 5 are furnished to Degesch on cost price by the other contracting partner. My question is the following: Witness, if it is correct that the products were furnished to Degesch generally at cost price, do then the dividends paid to the partners not constitute something different from a normal compensation for making available this small capital invested in Degesch?

A. First of all, it should be cleared up what is understood by the term "cost price" in number 11. Paragraph 11 of the quoted contract goes on to say, and I quote: "However, the market situation is to be considered by stipulations of prices in each case."

Q. My question was directed in the following way. If we assume, for purposes of discussion, that the partners forming Degesch furnished these products at cost price, does then the paying of dividends not constitute something else from merely the compensation for making capital available? Whether that was really true it would be difficult to clarify in the frame of this cross examination.

A. I cannot answer that question on the basis of the documents that I saw, for as I already told you, the cost price should have been defined more closely; for in industry and trades there are various levels of cost prices, and I do not believe that your question is within the scope of my affidavit and cannot be answered within the scope of my affidavit 12203.

Q. Mr. Witness, I think we are essentially concerned with the term "dividends" that you used, and I believe that you can simply

answer the question whether you wish to maintain your term dividends that you used, if it would be correct that the Degesch partners furnished products at cost price and when I say price I mean post price; "Einstandspreis" is cost price.

A. I have to maintain the term used by me, dividends, because the documents that I had available when I made my affidavit also contained the term, dividend, themselves.

Q. According to the definition of the word "dividend", and you agreed with me as to its definition at the beginning of our question, then you must, of course, grant me that that word is somewhat misleading in this connection?

A. I cannot consider it as misleading because I did not make any statements in regard to your question whether the partners actually furnished products to Degesch at the so-called cost price or at their self-cost price.

Q. Do you see any difference between the two words, "Einstandspreis" and "Selbstkostenpreis", "cost price" and "self-cost price"?

A. The self-cost price, Selbstkostenpreis, might be the actual cost price which is paid for a product when producing it in their own factory. The Einstandspreis or cost price is actually increased very frequently in order to cover indirect costs which arise in the course of business which might be imagined on the basis of statistics.

Q. Witness, but in your view the Einstandspreis, cost price, is distinguished from the normal selling price by the fact that it contains no compensation for the producer?

A. That is true as a matter of principle.

Q. If it is correct then when Degesch paid dividends to its partners, it meant that they also paid any compensation for the products given to Degesch for sale besides normally giving them dividends.

A. As I already mentioned, I cannot state my opinion on this question because I should first of all have to make a detailed analysis

of the cost price of the products furnished to Degasch by the partners.

Q. If we assume for the moment that this analysis would show that essentially that it was actually furnished at cost price, then you would agree with my opinion, wouldn't you?

A. I would agree with your opinion if the cost price actually constituted only the actual production cost without any room for profit margin.

Q. I have no further questions in regard to this affidavit, and only one brief question to the statement which you made in exhibit 1793, which is Document III-7913-B. The document is to be found in book 83, page 100 of the English and 105 of the German. In this statement you say that the two attached delivery notifications are typical of the 52 notifications which you examined and that those notifications refer to deliveries of Zyklon B by Dessauer Werke to Degasch. In this connection I should like to put the following question to you. Over what period of time do these 52 notifications extend, that you examined?

A. These 52 delivery notifications are distributed over a period of time from the 26th of November, 1944 to the 11th of January 1945.

Q From 26 September 1944 to 11 January 1945. Then to be quite sure I would like to ask you: Your affidavit refers to the two delivery notifications bearing date of 26 September 1944 and 29 December 1944?

A That is correct.

Q They do not refer to the delivery notifications in the previous document which are designated as NI-9913-A and which are dated 11 April 1944?

A The two delivery notifications under NI-9913-A are identical with the ones that I mentioned in the affidavit.

DR. HEINTZELER: I thank you. I have no further questions to the witness.

THE COMMISSIONER: Is there any redirect.

MR. SPRECHER: Mr. Commissioner, there is not redirect.

THE COMMISSIONER: The witness will be excused.

Is there anything further at this time that should be brought up before the Commissioner? Have you anything, Mr. Prosecutor?

MR. SPRECHER: Mr. Commissioner, possibly only this: I sent at your request or rather at the request of Dr. Boettcher a memorandum to you with copies to the Defense Counsel on the 10th of December, 1947, concerning the availability of affiants who have been referred to the Commissioner in Case No. VI. Without wanting to suggest any specific time, there are certain proposals therein which we feel should have a reply from the Defense as soon as possible, and I was wondering if Dr. Mueller was able to indicate to us at this time any proposals he has in that connection.

THE COMMISSIONER: Have you anything to say in regard to that, Dr. Mueller?

DR. MUELLER: We have next week a meeting of the Defense Counsel, and I shall see if it will be possible to give you my point of view on this question on that day. If that is possible, then I shall get in touch with Dr. Sprecher.

THE COMMISSIONER: Gentlemen, I wish to call to your attention that on Monday, December 15th, at nine-thirty a.m. in this courtroom there will be three other witnesses presented for examination. The names are Schlotterer, Wolff and Krueger. I do not have the first names before me at the moment, but I am sure that you will know to whom I am referring. Schlotterer's name is Gustav and Wolff's name is Karl—yes — and Krueger's name is Dr. Kurt Krueger. These witnesses will come up for examination at nine-thirty Monday morning. It is possible that the examination will extend into the afternoon. I have been notified by Dr. Mueller that all of these affiants will be represented by counsel and that the presence of defendants Ilgner, Kugler, Buetefisch and Mann will be required. All of you who are interested in that matter will please take notice and be here at nine-thirty Monday morning.

Mr. Prosecutor?

MR. SPEECHER: I will refer to Dr. Mueller.

DR. MUELLER: Mr. Commissioner, may I point out that the examination of the affiant Krueger was scheduled for the afternoon at 1330, according to the conversation we had recently and not in the morning. I point that out to you because it is my experience and it is my knowledge that a number of Defense Counsel will arrive only in the course of the morning on Monday, and I don't know whether they will be here at nine-thirty. All defense counsel are informed that Krueger is to be examined at 1330 on Monday.

MR. SPEECHER: It is about that matter that I came to the podium, Mr. Commissioner.

THE COMMISSIONER: You may proceed.

MR. SPEECHER: Dr. Randolph Newman, the attorney on the Prosecution staff who has worked most closely with Count II with which the affidavit of Schlotterer is concerned, has been required to leave the country, and we are informed that because of the transportation difficulties there may be some delay in getting him back here before Monday morning.

Secondly, the affiant Schlotterer is still in Berlin unless he has returned without my knowledge today, and there might be some question whether or not he could be produced the first thing on Monday morning. We have assurances from military authorities that he will be returned, but given winter weather sometimes those assurances do not bear fruit.

I would like to suggest to Defense Counsel, therefore, that all Defense Counsel who have any interest in any of these three affiants be present as soon as possible on Monday because it may be necessary to put Krueger on the stand before Schlotterer.

THE COMMISSIONER: As I understand it, then, Mr. Sprecher, you may or may not have Mr. Schlotterer here Monday morning; you don't know.

MR. SPRECHER: Yes. It is partly without our power and then partly we have a problem within the Prosecution staff.

THE COMMISSIONER: Yes, one of your staff is absent who would carry on the interrogation, is that correct?

MR. SPRECHER: Yes.

THE COMMISSIONER: So that Schlotterer is not one we can depend upon for Monday morning. And now suppose we have it this way. My understanding of the Monday situation was that these three men would constitute all of the parties who would be examined Monday morning, and that the first two, Schlotterer and Wolff, would go on in the morning and that Krueger would go on in the afternoon. Now, of course, the Defense Counsel are entitled to consideration as to Krueger if they have made arrangements in accordance with our understanding.

MR. SPRECHER: That is correct. That is certainly true.

THE COMMISSIONER: Yes. So I think that what we should do is to meet Monday morning at nine-thirty, as I have stated, and if Mr. Schlotterer is here and available for examination, we will put him through his paces. If he is not, we will examine Mr. Wolf and adjourn or recess until the afternoon, and then hear Mr. Krueger. Is that satisfactory?

MR. SPEECHER: Yes, and then assuming we finish Kruoger and the
affiant Schlotterer, and Dr. Newman is available, we could have him
immediately thereafter.

THE COMMISSIONER: Is there any objection to that?

DR. HUELLER: I quite agree with you, Mr. Commissioner.

THE COMMISSIONER: Very well, in that case the Commission will
recess until nine-thirty Monday, December 15, 1947.

(The Commission adjourned until 0930 hours, 15 December 1947.)

CERTIFICATE OF COMMISSIONER

I, JAMES G. MULROY, AGO #B-397399, hereby certify that I am a duly appointed, qualified and acting Commissioner, to take the testimony of witnesses under Order of Tribunal No. 6, in the case of United States of America vs Krauch et al; that pursuant to said Order, upon the dates hereinafter listed, I have supervised the taking of testimony of witnesses examined before me, and said testimony has heretofore been properly recorded, reported and filed in the Office of the Secretary General and now constitutes a part of the official transcript of proceedings in the above case; and the dates of such examinations, names of witnesses and pages of the said official transcript are as follows:

<u>Date</u>	<u>Name of Witness</u>	<u>Official Transcript</u>
¹² 22 December, 1947	Paul H. Haeni	4577-4595
→ 15 December, 1947	Karl Wolff	4596-4657
15 December, 1947	Gustav Schlotterer	" "
17 December, 1947	Kurt Krugger	4692-4710
9 January, 1948	Adolf Hoehle	4946-5024
9 January, 1948	Willi Dagne	" "
9 January, 1948	Karl Amend	" "
17 January, 1948	Alfred Zaun	5470-5512
17 January, 1948	Perry Broad	" "
6 February, 1948	Josef Joham	6826-6881
7 February, 1948	Franz Rottenberg	6957-6979
26 February, 1948	Noack Treister	7696-7732
27-28 February, 1948	Rene Balandier	7925-7963
16 March, 1948	Fritz Goernert	9288-9305
16-17 March, 1948	Gerhard Ritter	9305-9358
17 March, 1948	Heinrich Van Beek	9359-9376
18 March, 1948	Dr. Charles Bendel	9584-9616b

I further certify that the aforesaid transcript pages comprise a full, true and correct report of said proceedings, testimony and evidence heard and recorded at proceedings before said Commissioner.

Dated at Nurnberg, Germany, March 31, 1948.

JAMES G. MULROY
Commissioner of Tribunal No. 6

James G. Mulroy

Official Transcript of Commission for American
Military Tribunal VI in the matter of the United
States of America, against Carl Krauch, et al,
defendants, sitting at Nurnberg, Germany, on 15
December 1947, 0930; Commissioner Mulroy presiding.

THE MARSHAL: The Honorable, the Commissioner of Military Commission VI.

Military Commission VI is now in session. God save the United States of America and this Honorable Commission.

There will be order in the Commission.

THE COMMISSIONER: The Marshal will report the defendants who are present by name.

THE MARSHAL: May it please the Commissioner, the defendants Ilgner, Bueteffisch, Mann and Duerkfeld are present. Kugler is in place of Mann, sir.

THE COMMISSIONER: Dr. Mueller, may I ask if all of the defendants and their counsel who are interested in this hearing are present?

DR. MUELLER: Mr. Commissioner, I asked for the personal attendance of the defendant Mann in my letter which I gave you Friday.

THE COMMISSIONER: That didn't come through, counsel.

DR. MUELLER: On Friday I also asked that the defendant Mann, be present here.

THE COMMISSIONER: The defendant, Mann, as I understand it, will be here this afternoon but for the purposes of the hearing this morning may I ask if all the defendants are present?

DR. MUELLER: For this morning, yes.

THE COMMISSIONER: Very well. The record will so show. Before the examination of witnesses commences, is there any other matter which either the prosecution or defense desires to enter upon the record?

MR. SPRECHER: Mr. Commissioner, we have had some difficulties with respect to the witnesses who were to appear.

Some of the service authorities upon whom we are forced to rely to bring witnesses here have not been able to inform me as to why Dr. Krueger is not in Nurnberg. We were assured before the week end that he would be produced Sunday afternoon and be here this morning. So far he is not here. I will expect a further report very shortly and I will expect a further report very shortly and I will report on the results of our informal investigations in the meantime at the conclusion of the examination of the first witness this morning, General Wolff.

THE COMMISSIONER: Well, Mr. Prosecutor, have we any other witnesses this morning besides General Wolff?

MR. SPRECHER: Yes, Dr. Schlotterer.

THE COMMISSIONER: We have two witnesses this morning then?

MR. SPRECHER: Yes.

THE COMMISSIONER: And that is according to our schedule of last Friday, I believe.

MR. SPRECHER: Yes, but I wanted to give the announcement about this afternoon since Krueger was scheduled, and it may not be possible to bring him.

THE COMMISSIONER: We may not have any afternoon session in that case. How soon will you know that, Mr. Sprecher?

MR. SPRECHER: Well, I can't tell. The telephone to Frankfurt is not in the best working order so far as speed is concerned.

THE COMMISSIONER: Well, in that case I think we should proceed with what witnesses we have and let me know as early as possible what developments ensue. Anything from the defense?

DR. MUELLER: No.

THE COMMISSIONER: You may call the first witness, Mr. Prosecutor.

MR. SPRECHER: The first witness is General Karl Wolff.

KARL WOLFF, a witness, took the stand and testified as follows:

THE COMMISSIONER: Witness, will you please remain standing for the purpose of being sworn? Raise your right hand and say I, state your name, --

THE WITNESS: I, Karl Wolff --

THE COMMISSIONER: And repeat this oath after me. I swear by God the Almighty and Omniscient that I will speak the pure truth and will withhold nothing and add nothing.

(The witness repeated the oath.)

THE COMMISSIONER: The witness may be seated. You may proceed, Mr. Prosecutor.

MR. SPRECHER: Mr. Commissioner, the affidavit in question is our exhibit 1582, document number NI-6025 F, which is found in book 91, in the English document book at page 14 and in the German document book at page 16. The witness has been given a copy of his affidavit in the German language and has it before him.

DIRECT EXAMINATION

BY MR. SPRECHER:

Q. Is that correct, General Wolff?

A. Yes sir.

Q. General Wolff, this affidavit states at the end that it was taken before Norbert Barr on the 30th day of April, 1947. You gave that affidavit under oath; is that correct?

A. Yes sir.

Q. Now, in November, the last part of last month, did Dr. Charmatz who sits to my right here, discuss with you this affidavit again?

A. Yes.

Q. And at that time did you indicate to him certain additions or corrections which you thought were necessary so

that the full truth appeared?

A. Yes.

Q. Will you take your affidavit before you and point out those corrections? I have the transcript of your interrogation here so I think I can help you, but if I should omit anything please inform me. As I understand it, the first addition or correction you would like to make is in paragraph 5. Would you check that and then tell us what the addition is?

A. Yes, in paragraph 5.

Q. Would you proceed to point out what the correction is? I believe it had to do with the name "Rasche".

A. With the name "Rasche", yes.

Q. Go ahead. Proceed.

A. I had asked that in the sixth line of paragraph 5 the name "Rasche" should be replaced by "Meyer".

Q. And the next correction you indicated to Dr. Char-matz is in paragraph 8 in the last line. Would you proceed and tell us what that is?

A. The carbon copy is very poorly legible. It must be some other paragraph.

Q. Witness, Mr. Charmatz will show you another copy that is more readable.

A. Yes, thank you. In this paragraph I had requested that the word "sometimes" be inserted.

Q. Will you be a little more full because we want to know where the word "sometimes" should be inserted.

THE COMMISSIONER: Just a moment, please. Will you please indicate to me the paragraph that is in question here?

MR. SPRECHER: That is paragraph 8, Mr. Commissioner.

THE COMMISSIONER: It is on page 16?

MR. SPRECHER: It is just the full numbered paragraph 8 in the text of the affidavit.

THE COMMISSIONER: Of Book 91?

MR. SPRECHER: Yes.

THE COMMISSIONER: Book 91, paragraph 8, Very well; you may proceed.

THE WITNESS: The final line should after the word "sometimes" be added, read as follows: "in order to show them sometimes how their money gifts were used."

BY MR. SPRECHER:

Q. And then I believe in paragraph 9 you had toward the end an addition.

A. In paragraph 9 I wanted to insert the words "without any supervision", so that the final text should then read: "You are permitted to talk to any of these people without any supervision."

Q. Now with respect to paragraph 10 I believe you indicated that one of the Defense Counsel had shown you some type of an order from Goering to Himmler. Would you indicate the significance that has with respect to how you would like to treat paragraph 10?

A. Yes.

Q. Proceed.

A. May I ask you if it is sufficient for me merely to read the text as it was stated by me in the affidavit, or what exactly do you wish me to do?

Q. Well, what we want is to have the affidavit and your testimony together. What we want is to arrive at a condition whereby your affidavit and your present testimony gives the full truth, so you do what is necessary to indicate the full truth with respect to paragraph 10 at the present time. It is a short paragraph. If you want to read it and then make the corrections, you take your time and then do that.

A. In my affidavit of April I had stated the following: I remember that in the Spring of 1941 Kranefues asked me to receive Bueteftisch at the request of the Gau Labor Office or the Labor Ministry, which I did because he was one of the most important members of the Circle of Friends. In his foresight Himmler wanted to build a factory at Auschwitz under the supervision of the SS for the production of synthetic fats. Goering upset our plans for he endeavored not to permit the SS to gain too much influence in industry. It was natural that I. G. Farben, which finally built a factory there, received allocations of labor from concentration camps. As far as I remember, I referred Bueteftisch who discussed this matter

with me to Pohl or to Gluecks who settled the technical questions with him.

This statement I should like to supplement by saying in regard to paragraph 10 that in the meantime one of the Defense Counsel showed me the written order of Goering of 18 February 1941 directed to Himmler in which Goering demands the allocation of suitable labor from Auschwitz concentration camp for the building of a Buna factory. From this order it can be seen that in my official capacity I had to deal with this matter.

Under paragraph 10 I mentioned that Kranefuss had asked me to receive Buetafisch at the request of the Labor Office, and so on, because he was one of the most important members of the Circle of Friends. I wish to point out here that as far as I remember, I was absent for a certain period of time and that, therefore, I could not receive Buetafisch for some time, and he had asked for an interview with me in vain during my absence. That is as far as I remember.

My first statement that I made is based on the fact that either Kranefuss himself or his secretary, who wanted to arrange this interview, pointed out to me that such an important member of the Circle of Friends should not be kept waiting for a long period.

In regard to the penultimate sentence of number 10 which speaks quite generally of the work and the ideal endeavor of the SS, I wanted to add that the members of the Circle of Friends were always informed about the positive tasks of the SS by Himmler, but they were never informed about the degeneration that took place in the SS later on.

Q. You mentioned Kranefuss. Did he act as more or less the adjutant of the Himmler circle?

A. Kranefuss was Keppler's right-hand man. He might be called a sort of business manager of the Circle of Friends.

Q. What were his business connections, if you know?

A. Kranefuss was the general director of the BRABAG in Berlin.

Q. Now would you indicate any other additions or corrections which you would like to make, any amplifications which are necessary to give the full picture?

A. As far as I am concerned, everything has been supplemented and corrected which is necessary.

MR. SPRECHER: No further questions.

THE COMMISSIONER: Cross examination by the Defense Counsel is not in order. May I ask that Defense Counsel in each case state his name for the purpose of the record, and the defendant whom he is representing.

DR. FLAECHEISNER: Flaechesner for Guetefisch.

THE COMMISSIONER: You may proceed, Doctor.

CROSS EXAMINATION

BY DR. FLAECHEISNER:

Q. General, I want to put a few questions to you about the Circle of Friends first of all. You say that you were one of the Circle of Friends since 1933 and 1934, is that correct?

A. In 1933 and 1934 I was Himmler's adjutant and I participated in the meetings of the Circle of Friends. At that time the Circle of Friends was called "Industrial Circle of Friends" or "Circle of Friends of the industrialists" because it was composed of industrialists alone. Only at a later time, as far as I know during the War, the Reichsfuehrer admitted a number of high-ranking SS leaders regularly into these meetings in order to have a certain substitute for his own absence. In order to remove any doubt and because I wanted to lay down as much responsibility for myself as was due and necessary, I myself designated myself as a member of the Circle of Friends, because in the cases where Himmler was absent during the first years of the the War I was to speak the Deputy

of the Reichsfuehrer-SS, as far as the Circle of Friends was concerned. I believe that states the position very exactly.

Q. May I ask you, General, in 1933 and 1934 when the Circle of Friends was still called the Keppler Circle, was the association with the Reichsfuehrer at that time more intimate or did it not become more intimate only in 1937 so that at that time the designation Circle of Friends would be justified?

A. Yes. These things were in a constant state of flux, and it is true that this circle at the beginning was called the Keppler Circle, and from this the Circle of Friends of the Industrialists, so-called, was formed.

Q. Would you wish to correct your statements and supplement them in regard to the time when that was?

THE COMMISSIONER: That question can be answered either by "yes" or "no", and it will be remembered by all Defense Counsel that the Tribunal has made a rule that the testimony shall not go beyond the question. I would like Defense Counsel to remember that so as not to make this record more voluminous than is necessary.

I think the witness has answered your question.

DR. FLAEGHSNER: I wanted to know from the witness, Mr. Commissioner, since what period of time the Circle of Friends had a closer connection with the Reichsfuehrer-SS, and since what time it called itself the Circle of Friends. I wanted to know the exact date.

THE COMMISSIONER: You may ask him that.

THE WITNESS: Approximately from 1935 to 1936, as far as I remember.

BY DR. FLAEGHSNER:

Q. Was this Circle of Friends an association with charters, with chairmen, with regular meetings of the members, with the right of vote? Was it an association or club, or

was it not such an association or club?

A. No, it was not an association or club.

Q. Is it correct that the gentlemen were invited by Mr. Kranefuss to participate in these meetings which Kranefuss arranged?

A. Kranefuss addressed the invitations, but he did so on behalf of the Reichsfuehrer-SS.

Q. In your affidavit you mention a number of gentlemen who were invited regularly for the meetings of the Circle of Friends. Did you know all these gentlemen personally?

A. Yes.

Q. I agree with you if I assume that this Circle of Friends was of a very heterogeneous nature. I find among these people representatives of banks, shipping lines, trades, industry and then I also find names which belong to another circle, for instance, Oswald Pohl -- that is on the other side when you turn the page -- Ohlendorf. Is it correct if I say that it is a very mixed group?

A. Yes.

Q. Were these gentlemen in these meetings of the Circle of Friends from the very beginning?

A. No.

Q. Is it correct for me to say that the Circle of Friends was supplemented and completed in its members in the course of the years?

A. Yes.

Q. Do you know that Dr. Bueteffisch together with Karl Lessing came to these meetings only beginning with March, 1939?

A. I cannot confirm the exact date for you, but as far as I know and to the best of my recollection, it was approximately at that time.

THE COMMISSIONER: Dr. Flaechsner, may I interrupt just a moment? I have just been informed by the Marshal that the

defendant Mann is now here as available. Is it the desire of Defense Counsel that he be present at this time?

DR. FLAECHSNER: We should like to ask you to have him admitted Mr. Commissioner.

MR. SPRECHER: Mr. Commissioner, in order possibly to save some further questioning at another time, I merely want to state for the record that the Prosecution has no evidence that Buetafisch attended the meetings of the Circle before March, 1939.

THE COMMISSIONER: You may proceed, Dr. Flaechsner.
BY DR. FLAECHSNER:

Q. General, do you know that Kranefuss had to do officially with the BRABAG and Mr. Buetafisch?

A. Yes.

Q. Do you know that Keppler was the chairman of the Aufsichtsrat of the BRABAG and that he also asked Kranefuss to request Buetafisch to enter the Circle of Friends?

A. I know that Keppler was the chairman of the Aufsichtsrat of the BRABAG. However, I do not know with certainty that Keppler instigated this request or not, but it might be possible.

Q. General, you say, under No. 11, that the Circle of Friends had regular meetings every month. Would you please be a little more complete and tell me from what period of time these monthly meetings took place?

A. As far as I remember, beginning with 1936.

Q. Is that a definite recollection that you have or is it a doubtful recollection? I ask you because other witnesses in another court made different statements.

A. It is very difficult to be quite definite after ten years have elapsed, but '36 or '37 is the date, to my best recollection.

Q. General, is it correct that during the time before the war broke out and during the war itself the Reichsfuehrer SS participated only rarely in the meetings of the Circle of Friends--or almost not at all?

A. During peacetime--that is, before the war broke out, the Reichsfuehrer participated in these meetings as often as he could, and every time when he was prevented from doing so by official business it meant a disappointment for the members who had met. Therefore, the Reichsfuehrer restricted and confined his absences to a minimum and tried to be present as often as he could.

Q. How was such an evening conducted in the Circle of Friends? What took place there?

A. At the appointed hour people came together in the Air Force Building in Berlin (Haus der Flieger), in an ante room of the dining room, and, there, cocktails or vermouth were served before everybody arrived. That took about fifteen minutes to a half hour. People stood around in little groups, talking. Subsequently, the joint dinner took place, and here the places of honor at the right and at the left of the Reichsfuehrer were assigned to the members of the Circle of Friends, in an ever-changing order. The food itself was good, as far as quality was concerned, but it was very modest as far as quantity was concerned... I don't know if you are interested in that.

At any rate, people were not gluttons. After dinner, the members sat around at various tables and the Reichsfuehrer went from one table to

another and stayed at each table about twenty minutes or a half hour so that he could speak to each one of the gentlemen present in these meetings.

Q. Do I understand you correctly, witness, if I describe these meetings by saying that they were of a social, and purely social, nature?

A. Yes, but I would contradict my duty of being under oath if I do not tell you that this Circle of Friends was a selection of the best and most decent industrialists and that it was a sort of distinction. It meant a distinction for everybody who had the honor of being invited to participate. And perhaps I may also say that in this way Himmler had a certain number of contacts in the most important circles of industry in the persons of these decent experts, people whose judgment he might consult if the need arose.

Q. Now, witness, do you know any definite cases where he consulted such people?

A. I remember the great dispute which Ley had, as the representative of the unions and consumers' associations, and as representative of the Labor Front. In this economic question in which Himmler was not an expert he consulted the advice of Dr. Hayler, who was a member of the Circle of Friends, and he decided according to the ideals of the SS to protect individual and private enterprise.

Q. In your affidavit you mention the contributions. Did Kranefuss and Baron Schroeder solicit these contributions?

THE COMMISSIONER: Now, that is a question that can be answered by either yes or no.

A. Yes; with the help of Mr. Steinbrinck, who also participated in this.

Q. Is it correct that these contributions were solicited for cultural purposes and for purposes of representation?

A. Yes; first of all only for cultural purposes, and later for social purposes and purposes of representation.

Q. When Himmler approached the gentlemen of the Circle of Friends for the first time with the request for contributions, did he give for his

reason why he was doing this that in his budget there was no fund for cultural purposes and that in order to make available the means for these cultural purposes he had to turn to his friends in the Circle?

A. Yes.

Q. Witness, do you know that the contributions were paid by these individuals to an account of the Steinbank in Cologne, as "Account S -- Contributions"?

A. Yes.

Q. Was it possible for one of the contributors to determine the use to which his contributions should be put and to ask for an accounting of his contributions?

A. When the contributions were solicited for the first time Mr. Steinbrinck and Mr. Schroeder had been offered by Himmler the right of auditing the books, but for tactful reasons these gentlemen did not make use of this offer, just as the treasurer of the party Schwartz would not have done that. It was impossible for the individual to gain an insight into the accounting details.

Q. Was it customary in the Circle of Friends to discuss the amounts which the individual gentlemen had contributed?

A. No member of the Circle of Friends ever spoke about this in my presence.

Q. General, a little while ago you mentioned Mr. Kranefuss as a sort of business manager of the Circle of Friends. Do I understand you correctly if I assume that you meant by that that Kranefuss invited the participants in each case and that he also had a certain right of disposition to say who was to be invited?

A. Yes.

Q. Do I understand you correctly, witness, that you want to say that Kranefuss had close connections with the Reichsfuehrer SS?

A. Yes.

Q. A little while ago you stated that the invitations for these Circle of Friends meetings were considered a distinction for the industrialists. Did Mr. Kranefuss invite for this Circle of Friends, first of all, his personal acquaintances?

A. No.

Q. Was anybody invited for this Circle of Friends who had not been approved by Kranefuss?

A. No.

Q. You already mentioned, General, a little while ago, that the degeneration and the negative aspects of the SS were never discussed in the Circle of Friends; as far as you know were such things ever discussed in the Circle of Friends, for instance: persecution for racial or political reasons, experiments on human beings, and similar things?

A. During my time and in my presence, never.

Q. I shall now turn to paragraph 10 of your affidavit, witness. You already made a few corrections with regard to this paragraph, but for a better enlightenment I should like you to tell me the following. You say in your affidavit that Kranefuss asked you to arrange an interview with him. Is it correct if I understand that to mean that Kranefuss's office or perhaps Bueteufisch's office, via the Kranefuss office, tried to arrange a time for an interview with you because it was very difficult, because of your official business, to get admitted to your office?

A. You understood correctly what I tried to say.

Q. It was a favor that Kranefuss did, that the office of Kranefuss did?

A. Yes.

Q. Do I understand you correctly that Mr. Kranefuss had nothing at all to do with this matter, in an official way?

A. Yes.

Q. At that time, Dr. Bueteufisch came to you and you say that Bueteufisch had described to you the plant enterprise in Auschwitz, and you think that he also pointed out Goering's order to you? I should like to ask you, wasn't it true that Goering's order was directed to Himmler and that you stated to Herr Bueteufisch that it had been determined that in the construction of the Buna plant in Auschwitz concentration

camp inmates should be used, experts from among the inmates should be used for labor? Is that correct?

MR. SPRECHER: Mr. Commissioner, if the witness knows, I have no objection of course to his answering, but there really isn't very much mystery in this letter. It is in evidence as Prosecution Exhibit 1417, which is NI-1240. You may find it in Prosecution Document Book 72, at page 39 of the English.

THE COMMISSIONER: As a matter of fact, I do not fully understand the question myself. Perhaps the witness does, and if so he can answer it briefly.

THE WITNESS: The starting point is Goering's written order to Himmler, Dr. Buetefisch, however, came to me, as far as I remember, upon the instigation of the Reich Labor Ministry, or the Gau Labor Office.

(Dr. Flachsenor)

Q Was the purpose of the conversation between you and Herr Buctafisch first of all to give you an opportunity to inform yourself about the type and character of the enterprise that was to be constructed in Auschwitz?

A As far as I remember, Dr. Buctafisch was to establish contact for the reason of the directives that I mentioned, and quite generally, he did explain to me the purpose of the construction work, and the details that he had reported to me about by his expert.

THE COMMISSIONER: Dr. Flachsenor, may I ask how much more time you will require in your cross examination of this witness?

DR. FLACHSNER: I assume that it will take about 20 minutes, and that is now the time of the recess.

THE COMMISSIONER: That is correct, counsel, and for that reason we will now recess for fifteen minutes.

(Commission in recess until 1115 hours)

THE MARSHAL: The Commission is again in session.

MR. SPRECHER: Mr. Commissioner, I have just talked to Dr. Meuller. It appears that the witness, Krueger, did not leave Frankfurt by railroad as we thought, he had as directed. The Prosecution has sent a jeep to fetch him and we expect that he will be here for certain tomorrow morning.

THE COMMISSIONER: You do not expect that he will be here this afternoon?

MR. SPRECHER: There is no chance. So far as we know he has not left Frankfurt, and has not reported to the witness house as instructed, and I do not think there is any train this morning.

THE COMMISSIONER: Then we may safely recess this hearing this afternoon to tomorrow morning?

MR. SPRECHER: That's right.

THE COMMISSIONER: Very well.

BY DR. FLAESCHNER:

Q Witness, did Herr Bueteufisch before this discussion, we were talking about, before the recess, or at a later date, ever talk to you about employment of concentration camp inmates?

A No.

Q In the Circle of Friends were such questions ever discussed at all?

A At my time and in my presence, no.

Q Thank you. I have no further questions.

CROSS EXAMINATION -continued

BY DR. SEIDL (counsel for the defendant Duerrfeld):

Q Witness, the Prosecutor has already mentioned Goering's order to Himmler of February, 1941, which the Prosecution has submitted as Exhibit 1417.

I am handing you this order, and I ask you whether at the discussion you had in March, 1941, with the gentlemen of the I.G., this order was available?

A As far as I remember, this order had reached Himmler at the time, and when it reached him, I heard of its contents in large outline.

Q Please look at the second page of this order, which shows that this order was not sent only to Himmler, but also to four other agencies including the General Plenipotentiary for special matters of chemical production, Professor Krauch and Under Secretary of State Syrup -- I am asking you is it right, under Under Secretary of State Syrup, was a member of the Reich Ministry of Labor?

MR. SPRECHER: Mr. Commissioner, in the interest of an orderly procedure, I wish to object to the question. What if Syrup was the official in the Reich Ministry of Labor, which we will stipulate to, incidentally; there is no necessity of bringing it out here. It is not a part of the affidavit itself or of the direct examination, and I think the line of questioning amounts to an attempt to write a brief here rather than to go into the affidavit.

THE COMMISSIONER: Dr. Seidl, you undoubtedly know the attitude of the Tribunal in regard to departures from the direct examination. I can make no ruling at the time, inasmuch as I hardly think it is within my realm of competence, but it will serve us all, if extraneous matters be not introduced, so I will ask you to consider whether or not you wish to have this question answered.

DR. SEIDL: Mr. Commissioner, the question is in exact agreement with the affidavit of this witness. Under figure 10 of his affidavit, which lies before the Tribunal in Volume 191, he says, and I quote:

"I remember that in the spring of 1941, Kranefuss asked me to ask Buetafisch at the instigation of the War Labor of Ministry, to receive him, and I did so". End of quotation. So if I now ask the witness whether Under Secretary of State Syrup belonged to the Reich Ministry of Labor, then I am using exactly the same words which the witness himself used in his affidavit, and I cannot imagine that there can be a question better connected with this than this question.

THE COMMISSIONER: I think that if you ask the question you speak of it can be answered simply Yes or No. I think the witness may answer the question, Yes or No.

MR. SIRECHER: I will stipulate Syrup was in the Reich Ministry of Labor. There is no problem about many of these things, and I do not see why we have to have questions for this type of thing. I will assume that it is so.

THE COMMISSIONER: Is that satisfactory, counsel?

DR. SEIDL: But I have further questions in this connection.

MR. SPRECHER: Let's get to these, Commissioner. We seem to have so many speeches before we get to the questions.

THE COMMISSIONER: The witness may answer your question Yes or No.
BY DR. SEIDL:

I repeat my question.

Q Witness is it right that Syrup was in the Secretary of the Ministry?

MR. SPRECHER: I object to the question. There is no purpose to it. I have agreed that he was. If there is a question as to whether this witness knows it, that is another matter, but it has not been asked in that way.

THE COMMISSIONER: Suppose you ask your question what does the witness know?

BY DR. SEIDL:

Q Witness, do you know it?

A Yes.

Q In that case, please answer the question.

A Yes, he was Under-Secretary of the Ministry of Labor.

Q I am now asking you, is it right that the Gau Labor Office were part of the organizational foundation of the Reich Ministry of Labor, and that as a result, Under Secretary of State Syrup was subordinate under Secretary?

A So far as I know, yes.

Q Is it right that in March, 1941, the Reich Minister of Labor was the highest officer in question of labor allocations, because Gauleiter Sauckel was appointed Plenipotentiary General only in March '42?

MR. SPRECHER: We will stipulate to that.

DR. SEIDL: In that case I waive an answer to the question, since the Prosecution admits that is right.

THE COMMISSIONER: You may proceed then, Dr. Seidl. Ask another question.

BY DR. SEIDL:

Q Witness, in your affidavit you mentioned the employment of inmates in the building of the new Buna plant of I.G. in Auschwitz. Were you yourself ever in Auschwitz?

A Yes.

Q When was that?

MR. SPRECHER: Mr. Commissioner, I object. There is nothing here about what conditions were in Auschwitz, or anything as to the importance of whether or not this witness himself was in Auschwitz. Furthermore, this affidavit is not directly concerning Duerrfeld whom this counsel represents.

THE COMMISSIONER: It seems to me, Dr. Seidl, that the Prosecution's objection as to the conditions in Auschwitz not being part of the affidavit is well taken, but if you wish to insist upon your question, the witness may answer briefly.

BY DR. SEIDL:

Q When were you in Auschwitz, witness?

A So far as I remember, in August, 1940.

Q Were you there with the Reichsfuehrer?

A Yes.

Q Were you there once again after that with the Reichsfuehrer?

A No.

Q How big was Auschwitz at that time?

MR. SPRECHER: Mr. Commissioner, I do not see the purpose and the connection to this affidavit.

THE COMMISSIONER: The Prosecutions, of course, will go into the record. You may proceed, Doctor.

BY DR. SEIDL:

Q How big was the Auschwitz camp at the time?

A The Auschwitz camp at the time consisted of about 1500 inmates.

Q How do you know for certain that you were in Auschwitz in August, 1940, and not in the spring of 1941? Have you any way of assisting your memory or for this assumption?

A Yes. From a discussion with Hoess, the Commandant of the Camp, which I had here in the prison court yard in May, 1946, and I refreshed my memory and made certain that my memory was not letting me down, and Hoess absolutely confirmed that without knowing why I asked him.

DR. SEIDL: Then I have no further questions of the witness.

MR. SPRECHER: Mr. Commissioner, the prosecution is in a strange position. We objected on the ground that it was irrelevant. It has clearly been shown that it had no connection after defense counsel had asked all the questions he chose to ask, and we would like to move to strike it out just in order to set some examples here so that fishing expeditions on side issues be not followed up as a matter of practice.

THE COMMISSIONER: I think, Mr. Prosecutor, that your motion is in order, but I don't find myself in a position where I can rule authoritatively on it. Of course, it is a matter for the record and you are preserving your rights in making it.

CROSS EXAMINATION

BY DR. HOFFMANN (Counsel for defendant von Der Heyde)

Q Witness, when counsel for Buettfisch, Dr. Flaechner, asked you about general SS matters you expatiated at some length and this gives me a reason for asking you the following: A man who had been a member of the Reiter-SS and later became an honorary member of the SD and who after that again left the SD, in your opinion was he and did he remain and would he again afterwards become a member of the Reiter-SS?

MR. SPRECHER: These are clearly matters which, if relevant, go as a part of Dr. Hoffmann's defense concerning the defendant von der Heyde. There is no statement in here about the significance of the Reiter-SS or concerning honorary membership in the SD if indeed that can be established which again is a question not in evidence and we are indeed getting into a collateral issue which has nothing whatsoever to do with the affidavit.

DR. HOFFMANN: Mr. Commissioner, I am most unhappy that counsel for the prosecution insists to such an extent on not having this question answered. Furthermore, since the matter of the Circle of Friends and membership of it certainly represents quite a similar question to that which I am asking and in Tribunal 6 it was always customary that when a question opened up such a territory the consequent question could also be asked, and I do beg you to let the witness answer this question.

After all he can answer it yes or no, one word.

MR. SPEICHER: I have also objections to the form of the question as being quite improper in form, assuming facts in evidence and so on and so on, but Mr. Commissioner, it is very clear from the statement of counsel himself that his attempt is to go into the nature of certain types of SS membership. This affidavit is clearly directed toward the Himmler or Kueppler Circle of Friends and nothing else. Things that are directly related thereto I have no objection to, but this is clearly an effort to bring in defense material ahead of time and it is not in the interest of an orderly trial and is clearly improper.

THE COMMISSIONER: Dr. Hoffmann, I have read this affidavit rather carefully and I can find nothing in it except a matter pertaining to the Circle of Friends and the membership of the Circle of Friends, and to some extent the activities of the Circle of Friends. Now, it seems to me that to go outside of that is clearly out of order. If, however, under the circumstances this witness can answer some questions at least by a monosyllable, I would be inclined to say that you might ask those questions provided they will not encumber the record and make it over voluminous. We want to follow the wishes of the Tribunal in this matter. You may proceed, and another thing, Dr. Hoffmann, perhaps you could change the form of the question so as to make it satisfactory to the prosecution.

DR. HOFFMANN: It is not very easy, Mr. Commissioner, but I will do my best.

BY DR. HOFFMANN:

Q Witness, may I ask you, if someone left a formation of the SS, shall we say the SD, would he return to his original formation?

A Generally speaking, yes.

Q Would you confirm that in particular for a member of the Reiter SS who had for a time been honorary member of the SD and then left this SD, yes or no?

A Yes.

DR. HOFFMANN: Thank you.

THE COMMISSIONER: Is there any further cross examination of this witness? Redirect?

MR. SPRECHER: Mr. Commissioner, I have one or two questions growing directly out of cross examination which are merely for purposes of clarification, possibly of translation in one or two cases.

REDIRECT EXAMINATION

BY MR. SPRECHER:

Q You mentioned that the Keppler Circle came to be called the Circle of Friends. Was it just called the Circle of Friends or the Circle of Friends of the Reichsfuehrer-SS, or both?

A I believe from the knowledge of my membership, although this only went up to the 18th of February, 1943, and was repeated only once again in December, 1943, quite exceptionally, that there is no statute available so that I deeply regret being unable to answer the question clearly one way or the other. I can only assure you that the shortening of the name from Industrial Circle of Friends to Circle of Friends was one I heard only after the capitulation when I was a prisoner. I accepted this and followed this procedure here because I assumed that this had taken place between '43 and '45 without my presence or knowledge. Whether it actually took place or not I cannot state under oath from my own knowledge.

Q It was Circle of Friends in some connection. Friends of whom? Do you understand my question?

A Yes, but because of the significance I would like to be able to think it over conscientiously before I answer. I think that Circle of Friends meant a group of selected, exceedingly decent and valuable industrialists, and when the Circle was extended they only wanted equally valuable and decent industrialists to be included.

Q Apparently, General, you misunderstood my question. I asked you something about the meaning of the mere words "of friends", friends of whom? What did the "of friends" mean? The friends belonged to someone.

Who was that?

A The connection with the Reichsfuehrer-SS cannot be denied.

Q Is it a question only whether formerly it was always referred to as the Circle of Friends of the Reichsfuehrer-SS or merely as the Circle of Friends; is that right? Is that the question?

A No, first it was always Industrial Circle of Friends without any further description. An official description, Circle of Friends of the Reichsfuehrer-SS did not exist in my time.

Q Well, Baron von Schroeder, in a letter to the Reichsfuehrer which is in evidence here as exhibit 1504, NI-8125, states that "Your friends are at your disposal." And he is here talking about the contributions. Now that letter was written in May, 1942 when you were still the adjutant to Himmler and I ask you whether or not that refreshes your recollection about what "your friends" or the Circle of Friends meant in connection with the Reichsfuehrer, and I mean during your time, of course.

A May I ask, is this expression, "your friends are at your disposal" a term or phrase which von Schroeder uses with reference to the Reichsfuehrer or with reference to me?

Q No, no, with reference to the Circle of Friends.

A I am sorry, but could I perhaps look at this letter for a moment?

MR. SPEECHER: May I ask, Dr. Flaeschner, do you have the German copy?

(Document handed to the witness.)

Q. (By Mr. Sprecher) My question is rather simple. I became a little confused as to whether or not you were saying that these members of the Circle were friends of someone else than Himmler or if they were the friends of Himmler by denomination, by common calling.

A. They were friends of each other and they were friends of Himmler's too. They called themselves that and perhaps not every one of them called himself that, but Baron von Schroeder chose this courteous and uncommittal posture for all of them.

Q. Do you know whether or not Kranefuss checked the proposed members of the Circle with Himmler or with you or with Brandt?

A. Yes, Kranefuss usually discussed such suggestions with me beforehand.

Q. Did anyone get invited without the approval of you or of Himmler during your time, and if so --

A. Now invitations were not usually made in this way, but Kranefuss had such a confidential and friendly position both with regard to me and the Reichsfuehrer-SS that if we were away he could make his dispositions independently.

Q. Were they later referred to you or to Himmler for approval?

A. Kranefuss subsequently reported such cases to me. He would say, "Oh, by the way, I invited So and So the other day for the Circle of Friends."

Q. Well, after a man was once invited was it customary for him to come to the next meeting or did he merely come once and then not come again?

A. There were individual invitations which were not repeated, but they were the exception and very rare.

Q. Were there any members, so far as you know, who came more than once to the meeting without the personal approval of Himmler or his adjutant, and if so, please tell us which gentlemen fall in that category?

A. I think that I can remember such an exceptional case with

reference to Reichsbank President Puhl.

Q. Did Puhl ever have the approval of Himmler or not?

A. It is difficult to give a definite answer. I only have a vague recollection but my duty forbids me to keep it dark. This vague recollection is that some sort of examination of the suitability of Puhl may have taken place and that it was negative in its result so that Puhl was not taken into the Circle of Friends, in spite of the invitations which had previously been given.

Q. You recall no further example?

A. Not without any support from my memory.

Q. Do you know who conducted these investigations such as the one you mentioned of Puhl, a special committee or an organization or what?

A. As far as I remember such questions went to Heydrich as chief of the Security Police which, from the economical-political side, was the only possibility of getting an expert opinion.

MR. SPEECHER: No further questions.

THE COMMISSIONER: Are there any further questions of this witness? You may call your next witness, Mr. Prosecutor. This witness is excused.

(Witness excused.)

MR. SPEECHER: The next witness is Mr. Schlotterer. I would like to have Dr. Newman come down and he has already been informed. Could we wait just about two minutes?

THE COMMISSIONER: That will be all right.

MR. SPEECHER: While we are waiting perhaps I could lay the foundation. The only exhibit involved is Exhibit 1172 which is found in document book 63, English page 31 and German page 26. Dr. Newman is now here and I am giving the witness a copy of his affidavit in the German language.

GUSTAV SCHLOTTERER, a witness, took the stand and testified as follows:

THE COMMISSIONER: Witness, please raise your right hand, say "I",

state your name--

THE WITNESS: I. Gustav Schlotterer --

THE COMMISSIONER: Repeat this oath after me. I swear by God the Almighty and the Omniscient that I will speak the pure truth and will withhold and add nothing.

(Witness repeated the oath.)

THE COMMISSIONER: The witness may be seated.

DIRECT EXAMINATION

BY MR. NEWMAN:

Q. Mr. Schlotterer, will you please give your last private address?

A. Berlin-Dahlem, Anselstrasse 6.

Q. Have you read the German text of the affidavit before you?

A. Yes.

Q. Is there anything in it you would like to supplement or explain or correct?

A. No.

Q. Are there no additions on your side?

A. No.

MR. NEWMAN: Thank you.

THE COMMISSIONER: The defense may cross examine.

DR. SIEMERS: Siemers, counsel for Dr. von Schnitzler.

THE COMMISSIONER: I beg your pardon, Dr. I didn't catch your name. Wait until the whistle stops blowing.

DR. SIEMERS: Dr. Siemers.

THE COMMISSIONER: Thank you, Doctor.

CROSS EXAMINATION

BY DR. SIEMERS:

Q. Dr. Schlotterer, in your affidavit you say: "I have read this English document", and after that: "I am conversant with the English language". The document you mention is a very detailed letter from the Reichsmarschall, the Greater German Reich, Economic Administrative Staff East, Secret, 20 November 1941. When you made your affidavit did you read this letter in German, too, or only in English?

A. Only in English.

Q. Did you subsequently see the German translation submitted here which surprisingly enough has been handed in as a document? Did you see it afterwards?

A. No.

Q. As far as you remember, had you ever seen this letter before during your work in war time in German?

A. I remember -- please allow a little interval.

Q. Please.

A. I remember that I did read this letter during the war.

Q. In this letter there is mention of a meeting on 8 November 1941, a meeting which took place under Goering's chairmanship. Were you present at this meeting?

A. I think I was.

Q. You don't know for certain.

A. I think I am certain.

Q. In that case may I ask you to look at page 2 of the original of your affidavit.

A. Yes.

Q. It must be about the fourth line. There you say and I quote: "According to the reports on this meeting which

I had received, Goering now stated that he had just come from the Fuehrer and this attitude had been changed."

Does this formulation not sound as if you had not been present at the meeting?

A. At the time when the report was submitted to me I was not absolutely certain about it because there had been a number of meetings, but later I thought it over and reached the conclusion that I did take part in this meeting.

Q. In that case, Dr. Schlotterer, you must supplement or correct the affidavit in this respect.

A. Yes.

Q. I am very pleased to hear that you were present at this meeting. I should like to ask you about it. In your affidavit you said, "I do remember the fact of the famous or notorious speech of Goering's at the time where he said that the Russian must be regarded as a slave." And then there are further remarks about slave labor. Did Goering say that at this meeting?

A. Yes.

Q. Is that stated in the report which you have identified here?

A. Not in the record, at least not as far as I know.

Q. Do you have this document?

A. No, I haven't got it before me.

DR. SIEMERS: Mr. Commissioner, I would like to ask the Prosecution to show the witness the record or report of this meeting. Then I would ask Dr. Schlotterer to look at it during the midday recess because then the examination after the recess will be quicker and easier -- or by tomorrow morning. It doesn't matter.

MR. SPRECHER: Mr. Commissioner, I want to be certain they are all serious and know what we are doing here. The affidavit of the witness states that he has seen the English

copy. At the time when Dr. Siemers made his original objection to the exhibit, it was pointed out to him and to the High Tribunal that the original document had been lost and that that is the very reason why the English had been submitted to Dr. Schlotterer for his checking so that the translation which had been made at the time when the German was not lost could be checked as to accuracy. Dr. Siemers is very well aware of that. Now if Dr. Siemers is asking for the witness to see the retranslation from the English to the German in the German language in order to point out whether there are any translation errors in the German copy, we will be very happy to do that, but I just want Dr. Siemers to make his question clear that he is not asking the Prosecution to furnish the witness an original document, which the Prosecution has been so express to state to Dr. Siemers before, was lost.

THE COMMISSIONER: Dr. Siemers, now what do you say about that? Will you be satisfied with the record that Mr. Sprecher is willing to submit in compliance with your request?

DR. SIEMERS: Yes. I regret the misunderstanding, Mr. Commissioner. I have known Mr. Sprecher for two years here in Nurnberg, and I have always recognized his gifts for putting two and two together, but here he has added it up wrong. I don't want to criticize the translation. I want to discuss the actual facts with which the record deals as done this affidavit. The affidavit mentions a number of points from the record. That is why this record is the object of the affidavit. Whether it is shown to Dr. Schlotterer now in the German or in the English version or in both is a matter of complete indifference to me. That I leave to Mr. Sprecher or Dr. Schlotterer.

THE COMMISSIONER: Dr. Siemers, let me ask you: You are not asking for the original document, is that correct?

DR. SIEMERS: No. No. I never mentioned the original document at all, I believe.

THE COMMISSIONER: Very well, Mr. Sprecher.

MR. SPRECHER: We will be very glad to give the witness the document in evidence which is in English, a copy of it in English as well as a copy in German. Of course, he has gone over the copy in English before, but he can have both gone over. I just wanted to be sure that the record was clear so that we knew whether we were trying to improve upon the translation of the original document in evidence.

THE COMMISSIONER: Substantially then, Mr. Sprecher, you are willing to comply with Dr. Siemers' request?

Very well. You may proceed, Dr. Siemers.

DR. SIEMERS: Thank you very much.

BY DR. SIEMERS:

Q. When you have seen it, I will come back to the details, Dr. Schlotterer. Now I would like you to tell me about your affidavit, whether you remember the severe expressions of Goering's, "Russians as slaves", and so on, or did you only remember all that again when you had seen the record?

A. I remember these expressions in particular very well, indeed, because at the time we were rather taken back that in the twentieth century a statesman could open a meeting by saying, "We must reintroduce slave labor." I must say it was both for myself and for many another present at the meeting such a shock that it has stuck in my memory ever since more clearly than almost anything else I have experienced in my life.

Q. I can understand that, Dr. Schlotterer. How did these expressions affect you and the other members? Were Goering's words taken seriously or did one believe, as was sometimes the case with Goering, that it was an impasse on

his part which caused him to exaggerate, and that the matter was not so important, even if it was considered tactless and mistaken?

A. At the time he said that he came from the Fuehrer, and that this was the Fuehrer's new standpoint. The reaction of those persons—as far as I know several hundred were present at the time — is one that I cannot, of course, judge 100%. There was a certain wave of horror which passed through many of those present, and in conversations afterwards with various gentlemen, I must say that the general point of view was: Well, this is rather too much. It is absolute nonsense. What on earth are we to do with such an instruction? In the twentieth century one can't reintroduce slave labor. That was the point of view of many of the gentlemen whom I personally know.

Q. Do you remember from this meeting any words of Goering's which showed a different tendency, shall we say a sensible tendency, with reference to the treatment of occupied territory, or was his entire speech as nonsensical and stupid as you just described it?

A. It was to the effect that Russia not only during the War but even afterwards must serve to support the German economy, and I remember in particular that he said at the time, "The Fuehrer wanted the big German war debts which had arisen and which must arise to be met by planning the burden on Russian economy." and that was the starting point of the instruction that the level of life in the occupied territories of the East must be kept as low as possible so that the financial and economic difference could be skimmed off and used to pay off the German war debts. That was the general tenor of Goering's remarks.

Q. There is only one thing I don't understand. The record starts with the words, "The Discussion of Economic Policy and Organization in the Newly Occupied Eastern Territories", and then there is a discussion of economic policy. In what way was the question of so-called slave dealing connected with that, or the question of slave labor, which lay in a different field on Sauckel's side connected with Sauckel's job of bringing labor to Germany?

MR. SPRECHER: Just a minute. Mr. Examiner, really one cannot tolerate the stating of facts that are not in evidence. This has to do with something that happened in November, 1941. Dr. Siemers certainly knows that Sauckel did not become Commissioner for Manpower until a later time. He is assuming facts in evidence at the same time that he is asking his questions.

DR. SIEMERS: I beg your pardon.

THE COMMISSIONER: You are making an objection to Dr. Siemers' question, is that correct?

MR. SPRECHER: Yes, I object --

THE COMMISSIONER: On the basis that he is not within the framework of the affidavit?

MR. SPRECHER: No. My objection is on the ground of assuming a fact not in evidence, and in fact a fact which I am sure even Dr. Siemers will agree is not true, when he thinks about it.

THE COMMISSIONER: For the purpose of the record, will you state your position, Dr. Siemers?

DR. SIEMERS: I can clear it up. I beg your pardon. What Mr. Sprecher said is perfectly correct. It was only in March, 1942, that Sauckel came, so I ought to leave out Sauckel's name. I need only mention the Reich Labor Ministry, so --

THE COMMISSIONER: I should like, Dr. Siemers, in the interests of all of us who are interested in this examination that you keep within the framework of the affidavit.

DR. SIEMERS: Yes.

THE COMMISSIONER: Very well; you may proceed.

DR. SIEMERS: I think this is absolutely within the framework of the affidavit because in contrast to the record there is mention of slave labor in the affidavit. I did not start this subject; the Prosecution did.

THE COMMISSIONER: Please proceed and confine the examination as far as you can to very brief limits.

DR. SIEMERS: Yes. Apart from this question which already emanates from the text, may I ask if it is time for the recess now, because probably it will be easier and simpler if in the meantime Dr. Schlotterer would be kind enough to glance at the minutes either in English or in German, whatever he prefers.

THE COMMISSIONER: Very well, Dr. Siemers. Have you any further cross examination though at this time.

DR. SIEMERS: No. I would suggest that we recess and that after the recess, or whenever the Tribunal wishes, the cross examination be continued.

THE COMMISSIONER: Very well, we will defer your cross examination at this time, and I will ask the Prosecution to state whether or not you have anything to bring up in the meantime before the recess. Mr. Prosecutor, have you anything further at this time?

MR. SPRECHER: Nothing, Mr. Examiner.

THE COMMISSIONER: I have just received a memorandum from the Marshal which indicates that for the afternoon session we will be unable to have this room, and instead of this room, we will have the courtroom of Court No. IV,

room 196.

We will meet this afternoon at one-thirty at room 196. Is that clear to everyone?

This examination will recess until one-thirty this afternoon and will reconvene in room 196.

(The Commission recessed until 1330 hours.)

CERTIFICATE OF COMMISSIONER

I, JAMES G. MULROY, AGO #B-397399, hereby certify that I am a duly appointed, qualified and acting Commissioner, to take the testimony of witnesses under Order of Tribunal No. 6, in the case of United States of America vs Krauch et al; that pursuant to said Order, upon the dates hereinafter listed, I have supervised the taking of testimony of witnesses examined before me, and said testimony has heretofore been properly recorded, reported and filed in the Office of the Secretary General and now constitutes a part of the official transcript of proceedings in the above case; and the dates of such examinations, names of witnesses and pages of the said official transcript are as follows:

<u>Date</u>	<u>Name of Witness</u>	<u>Official Transcript</u>
12 December, 1947	Paul H. Haeni	4577-4595
→ 15 December, 1947	Karl Wolff	4596-4657
15 December, 1947	Gustav Schlotterer	" "
17 December, 1947	Kurt Krugger	4692-4710
9 January, 1948	Adolf Hoehle	4946-5024
9 January, 1948	Willi Dagne	" "
9 January, 1948	Karl Amond	" "
17 January, 1948	Alfred Zaun	5470-5512
17 January, 1948	Perry Broad	" "
6 February, 1948	Josef Johan	6826-6881
7 February, 1948	Franz Rottenberg	6957-6979
26 February, 1948	Noack Treister	7696-7732
27-28 February, 1948	Rene Balandier	7925-7963
16 March, 1948	Fritz Goernert	9288-9305
16-17 March, 1948	Gerhard Ritter	9305-9358
17 March, 1948	Heinrich Van Beek	9359-9376
18 March, 1948	Dr. Charles Bendel	9584-9616b

I further certify that the aforesaid transcript pages comprise a full, true and correct report of said proceedings, testimony and evidence heard and recorded at proceedings before said Commissioner.

Dated at Nurnberg, Germany, March 31, 1948.

JAMES G. MULROY
Commissioner of Tribunal No. 6

James G. Mulroy

The hearing reconvened at 1330 hours 15 December 1947.

THE MARSHAL: The Commission is again in session.

THE COMMISSIONER: The Marshal will report on the defendants present.

THE MARSHAL: Sir, the defendants Kugler and Mann are present in court.

THE COMMISSIONER: You may proceed.

DR. SIEMER: Thank you.

GUSTAV SCHLOTTERER - Resumed

CROSS EXAMINATION - Continued

BY DR. SIEMER:

Q. Dr. Schlotterer, you were kind enough as to look at the documents in the meantime?

A. Yes.

Q. Do you remember what brought Goering's discussion of labor procurement about? Was it a session in which the economic policy was to be discussed?

A. The subjects of Goering's discussions were always very wide, Goering was to inform all departments and authorities and to give them directives about their work in the occupied Eastern territories, and the labor questions were, of course, very closely connected with general economic questions. They touched upon economic policy because the occupied territories in the East were to produce on the one hand, and for that purpose they needed labor. On the other side they were obligated to furnish labor for Germany, and that was the reason why this subject was touched upon by Goering in this connection.

Q. Yes. If work in the industries in the occupied territories was to be continued, the labor had to remain there and not be carried off to Germany.

A. Yes. That was the contradiction which was always found in German economic policy towards the occupied territories of the

East. On the one side they wanted to have manpower and labor, and on the other side they wanted to safeguard the production in the occupied territories, and these were aims of course, which were in contradiction with each other and could not be carried out. These two parts stood in opposition to each other. They could not be brought to a common denominator.

Q. Did the expression come up in the meeting "due to the fact that in the interest of maintaining production in the Eastern territory labor should stay in Russia?"

A. As far as I know, it was stated at the time that the interest of the Reich in the procurement of labor and their commitment in Germany had priority and that later, if I may add that, in the further course of the discussion, Speer was the man who represented this policy in a ruthless manner.

Q. You looked at the document in the meantime. Is it correct that in the entire document the words that you mentioned in your affidavit about the so-called slave labor are not contained at all?

A. They are not contained in this affidavit.

Q. You say that they were general directives for the departments and for the authorities. Do I understand you correctly that what is contained in this document was not sent to industry?

A. It was not sent to industry. It was to be the basis for the work of the agencies and authorities.

Q. Thank you. In your affidavit you mentioned a few items, I believe four items altogether, where you answered the question of the Prosecution by saying that you remembered that these things actually were expressed in the document, — which is no longer available, — at the time in a similar form or in the same form as it is stated by you. I should like to ask you to supplement your statement. Please look at Document 440.

A. Yes.

Q. That is Exhibit No. 1171 and may I point out to you that under IV, the second page of the original — that is the second page after the distribution list — it is stated and I quote: "Work on finished goods is permitted in the occupied territories only if it is absolutely necessary", and "a) in order to reduce transport" and "b) in order to cover the most urgent needs of repair work in the country itself."

Do you remember that in this literal or similar form this question was discussed in this meeting or that it was contained in the document in so many words?

A. Yes, I remember that it was stated at the time by Goering. "We don't want to have very much industry in the country. It may be that during wartime German military interests might have an industry working for them in the country." And he gave this as an example. There may be other examples that he mentioned, but I cannot remember them exactly.

Q. May I ask you to look at page 7 of the original? That is under numeral four --

A. Yes, just a minute.....

Q. I quote. Page 13 in the document book -- but you can't know that; that is why I tell you. Page 13; have you got arabic number four?

A. Yes.

Q. "The rural population will get a sufficient share of the crops." Do you remember that enough harvest was to be left for the population in the country and that that was pointed out at the meeting?

A. It was stated at the time that the possibilities for the German agencies to control the country and to subject it to a detail economic control were very small, and that therefore the population in the country would have to help itself. And that this self-help should not be prevented or stopped. However, difficulties would arise where large centers of population were concerned, such as Leningrad or Moscow, Kiev, and the Donets Basin. Goering's opinion at the time was that those parts of the population which worked for the Wehrmacht or in any other German interest should be fed, and that for that purpose German agencies should give their aid.

Q. Dr. Schlotterer, I now refer to the most important point, the economic policy. The Prosecution has submitted a document, Exhibit No. 1170, which is an excerpt titled "Directives for Economic Policy in the newly Occupied Territories of the East." May I hand you this

copy? Excuse me, the document number is III-6375, from the International Military Tribunal: EC-347. On this sheet, under No. 2, it is stated: "According to the Hague Convention of Land Warfare, dealing with the administration of the economy of a foreign country occupied by an enemy power, those regulations do not apply to the USSR because it is regarded as dissolved. Therefore, the Reich has obligated itself to exercise all the functions of a government. Therefore, all measures are admissible which are necessary for the German Government for the execution of its all-comprising function."

Were these legal considerations already mentioned at the time in the meeting?

A. I cannot remember that it was discussed because the entire meeting was over-shadowed by the idea of slave labor and exploitation according to colonial methods. As far as I remember, Goering did not concern himself at all with this legal question but came to the subject matter itself right away.

Q. In your activity in the Ministry later, did this legal concept ever come to your attention, and do you know these directives?

MR. SPEECHER: Just a minute, witness. Mr. Examiner, I think that is clearly beyond the scope of what we are concerned with here, whether or not this witness knows that this particular translation conforms to an original document which announced certain policies which he knew to be in existence as of that time, namely in December 1941.

THE COMMISSIONER: Are you making an objection to the question, Mr. Prosecutor?

MR. SPEECHER: Yes; it being beyond the scope of the affidavit.

THE COMMISSIONER: Dr. Siemore, it is not within the scope of my authority to make a ruling, but I would be inclined to think that the Prosecution's objection is well taken. You may, however, if you see fit, require a brief statement from the witness in answer to your question.

DR. SIMPERS: It will be short, and I may point out that it is connected with the affidavit. Dr. Sprecher said that the question of the translation's conformity was the only question under discussion. Then, it is not entirely correct. The decisive point, namely, Goering's statements, we have just heard from the witness, that they are not contained in the document but only in the affidavit. In this government or with Goering and the military authorities. Dr. Schlotterer is competent for these economic questions.

THE COMMISSIONER: Do you mean that you wish to elicit from the witness what was the state of mind of the audience at this meeting, is that correct?

DR. SIMPERS: No, I should merely like to know whether there was any legal basis for Goering's opinion at the time. Later legal foundations are found in these directives which I used as an indication merely to refresh the witness's recollection, but I shall restrict my question and confine myself merely to asking the witness the following question.

BY DR. SIMPERS:

Q. Do you know any legal reasons which the Government gave for the standpoint of Goering and Hitler which Goering and Hitler regrettably held at the time?

A. I do not know the point of view, legally speaking, in detail. I merely know that it was stated at the time that the USSR was no longer considered as an existing state by the Reich Government, so that accordingly the situation was different, legally speaking, than it was in the occupied territories of Holland and Belgium.

Q. Thank you; that is enough. In conclusion, I should like to ask you, were such secret directives sent to all of industry?

A. Do you mean directives that are before me?

Q. Yes.

A. No, they went to the authorities.

Q. Thank you very much. Your affidavit was submitted, Dr. Schlotterer, not in connection with the question of slave labor but in connection with spoliation, so-called spoliation; that is, the use of economy and economic resources in the occupied territories.

I should like to ask you about the same document on page 90 in the document book. Do you have the German text before you?

A. Do you mean this record?

Q. Yes, that is on page 13; if you would kindly turn to that page. That is on page 19 of the English, page 13 of the original, under letter "a" "Principles for the Administration of Plants," under "I" "State-Owned Property and Privately-Owned Property."

A. Yes.

Q. Letter "a" — "Agricultural and industrial enterprises are property of the Soviet State". This property has now come into the hands of the Reich. Do you remember that this served as the basis, the legal basis, at the time?

A. It was fixed as the legal basis theoretically. However, practically, the following was true. In agriculture the local interest were of importance immediately, for, as is well known, the so-called "Kolkhoz" system existed in the Soviet Union which does not recognize private ownership of land by the peasants and, from the outside, an extremely hard pressure made itself felt to return the land to the peasants. Later regulations were published which provided for a gradual restitution of this land. In the industrial field we, of the Reich Ministry of Economics, were of the opinion that here, too, private property should be returned to the Russians. We did that in the so-called Baltic states. It was not necessary in Russia itself because there were no owners anymore who had owned this previously and such a measure could only be initiated after a long period of waiting. In the meantime, we initiated trusteeship administration which drafted trusteeship contracts for the various enterprises.

Q. Mr. Schlotterer, do you remember that these aspects were already expressed at that meeting, that no final settlement could take place for the industrial enterprises and the factories, but that our principle trusteeship organizations were to be instituted?

A This point of view was held before the meeting, but during this session it was once more confirmed by Goering because certain differences of opinion cropped up and it was to be expressed once more quite clearly that until further notice only trusteeship organizations were possible, apart from the Baltic States, of course; for indigenous and German people -- only trusteeship.

Q That is, for Russia?

A Yes.

Q Does your memory confirm and coincide with the statements on the same page, under letter "B"?

A Yes.

Q "All newly-occupied eastern territories should have no final change in the property status until the territory has been incorporated in the German Reich. Therefore, only trusteeship administration is admissible, as a matter of principle. The trusteeship administration does not entitle the trustee to the later acquisition of the property ..."

A Yes, that corresponds roughly ...

Q Did this meeting settle the question that this should be made quite plain, in edicts and regulations?

A I do not remember that. At any rate it was clarified legally. I don't know whether it was done in that meeting.

THE COMMISSIONER: Just a moment, please. Dr. Siemers, a number of your questions, it seems to me, require very little in the way of an answer. Quite often a simple Yes or No will be sufficient. I wish to say to the witness that it is not necessary to enlarge upon such a question because, if your answer is not sufficient, counsel will ask you another question, so that whenever a question is asked which can be

answered by either "Yes" or "No"; will you kindly answer it that way?

You may proceed, Dr. Siemers.

DR. SIEMERS: Thank you. I shall finish very soon.

BY DR. SIEMERS:

Q Do you remember whether, before this meeting, some legal regulation had fixed the basis for the economic policy towards the industrial enterprises?

A I do not remember; it is quite possible.

Q May I perhaps refresh your recollection by submitting to you a document from the International Military Tribunal, 1997-PS, which was submitted by the Prosecution in the Flick Case as Exhibit 564? This is a Hitler Decree about the administration of the newly occupied territories of the East, of the 17th of July 1941. May I show this to you?

I believe that you don't have to read it in its entirety, but the most essential thing for me is the introduction and the general tendency of this document.

A I believe, however, that this decree has nothing to do with the question under discussion, for we are here concerned with the initiation and the introduction of a general political administration -- and not about legal questions concerning property.

Q As you can see from the introductory remarks, Dr. Schlotterer, the basis is given here for the later legislation about the Russian state property, it begins with the words "To maintain order in public life in the occupied territories," and so on.

A But, generally speaking, it refers only to the fact that a special administration is to be initiated in these territories.

Q How was the property of the Russian state later called under a collective term? Do you remember this collective term?

A It was called "Special Property" (Sondervermogen). I don't remember exactly.

Q Perhaps I may correct you; it was called "Industrial Special Property" (Wirtschafts Sondervermogen).

A Yes, that is correct.

Q May I help your memory by saying that the regulations about the Wirtschafts Sondervermogen (Property marshalled for National Economy) refer to this decree of Hitler's; is that correct?

A That is correct, and I believe it is of importance only for external administrative reasons for the question of who was to have the right to administer these special properties was claimed by various German agencies; the Four Year Plan, the East Ministry wanted to administer it, and, in this case, the East Ministry was victorious because it referred to the Hitler Decree. That is how it is to be explained.

Q You are quite correct, Dr. Schlottner, but am I not also correct if I say that if the East Minister could refer to such a decree and was able to succeed by reference to such a decree, then it had to be of general importance for the entire eastern occupied territories?

A Yes, I believe that is correct.

Q Thank you.

MR. SPRINGER: Mr. Examiner, can we have the document marked for identification as a Defense Exhibit and, if not, the Prosecution will be glad to have the document, which has been brought to the witness's attention, marked as a Prosecution Exhibit.

THE COMMISSIONER: I will ask that the document be so marked. Do you wish to mark it as a Defense Exhibit, Dr. Simers?

DR. SIMERS: Yes; if I may offer it, with the Prosecution's permission, as Defense Exhibit Schnitzler No.2. May I ask Mr. Sprecher whether it will be sufficient for me later to incorporate it in my document book?

MR. SPEECHER: Certainly. That is, I can only speak for the Prosecution, Mr. Commissioner.

THE COMMISSIONER: Very well.

DR. SIMERS: Thank you. Then, as my last question:

BY DR. SIMERS:

Q Were you yourself competent for the treatment of trade and industrial questions in the occupied territories?

A Yes, if war-important and strategical productions were not concerned; that was a matter for the Armament Ministry.

Q In your department, was the principle always observed in conformity with this document, that no final change could be made?

A Yes, in regard to property rights, and this principle was maintained. I might say it was maintained 100 percent.

Q Thank you. I have no further questions.

THE COMMISSIONER: Dr. Simers; just one moment please. I should like to get the matter of this exhibit straightened out in my mind. That is the defendant von Schnitzler's Exhibit No. 2, as I understand it? Is that correct?

DR. SIMERS: Yes.

THE COMMISSIONER: And do you wish to offer it in evidence at this time?

DR. SIMERS: I should like to offer it, and especially

since the Prosecution suggested it, I should like to offer it as an Exhibit now.

THE COMMISSIONER: Then it may be admitted.

DR. SIEMERS: Thank you very much. I have no further questions.

BY DR. DIX: (Counsel for defendant Schneider)

Q Dr. Schlotterer, you have been speaking about the differences of opinion that existed with regard to the use to which the eastern labor was to be put. What reasons did Mr. Spoor's party give for using this labor at home?

A It was Spoor's opinion that the allocation of Russian workers to German industry would be more economical than their use on the spot. He believed that in Germany one might be able to supervise these workers better; they would be able to work with more modern equipment; their work could be better organized so that, from a technical point of view, the workmen could have a higher efficiency, perhaps by about fifty percent in a German shop, than if he were used abroad.

CROSS EXAMINATION

WITNESS GUSTAV SCHLOTTERER

BY DR. DIX, COUNSEL FOR THE DEFENDANT SCHNEIDER:

Q Was it not also discussed in this connection that a scarcity of manpower existed in Germany at the time?

A That was reiterated again and again.

Q Do you know that from your personal position, or aren't you informed about that at all?

A I certainly know that there was a scarcity of manpower in Germany during the war, and this was generally known.

Q Do you know that a special armaments and war production, - war industry, had a very big need for manpower?

A Yes.

Q So that one can very well say that Speer's opinion, and also those people who shared his opinion, arose from that very fact?

A Yes.

DR. DIX: I have no further questions.

THE COMMISSIONER: Is there any further cross-examination of this witness?

If there is not, Mr. Prosecutor, have you any redirect?

RE DIRECT EXAMINATION

SCHLOTTERER

BY MR. SPRECHER:

Q Dr. Siemers referred you to our NI 4440, the contemporaneous document upon which your affidavit comments, and he referred to G 1 G, which refers to petroleum. Now you later made the statement, Dr. Schlotterer, that in all cases the title and interest in property, apart from trustee

administration, was to be withheld until portions of Russia were incorporated within the Reich; is that correct?

A Yes.

Q Was there an exception with respect to petroleum so that during the war provisions were or were not made for Continental Oil with respect to the leasehold rights for oil beneath the ground in Russia?

A Continental Oil, A.G., received special consideration -- special treatment. Goering even stated that the interest of the Continental Oil demanded the creation of a very clear legal situation from the very beginning.

Q Tell us whether or not the Continental Oil did receive title or leasehold rights during the war to the oil in Russia?

A As far as I remember there was a difference between the oil below surface and above ground. About the sources of petroleum, it was stated the lease to Continental Oil was provided for, but in regard to the oil above ground which included plants and refineries, I do not know whether the Continental Oil had a private ownership in these properties.

Q What happened to the Russian oil which had already been drilled or brought to the surface; this is apart from my question. I am not talking about the use of oil which was already available or above ground. Do you know whether or not the Continental Oil took out or received as a grant, a leasehold to the oil which was still not pumped up to the surface?

A I have already stated that everything that was below ground, the sources of petroleum, should be granted to the Continental Oil, A.G., as a leasehold; once it was brought up above ground, it was to revert to the property of the

Continental Oil Company.

MR. SPEECHER: I have no further questions.

THE COMMISSIONER: Is there any further cross-examination?

BY DR. SIMERS:

Q Dr. Schlottor, one question with regard to the last statement about Continental Oil. You said that the Continental Oil received a special consideration, if I understood you correctly. Is it correct that in this case too the basis was the fact that the mineral oil industry in the occupied territories of the East was to be operated?

A Yes.

Q Excuse me, I point out to you and ask you whether this document coincides with what you have in your memory, under page 13, under Ic, Roman Numeral I e. Do you have that particular passage?

A Yes.

Q Was that the basis?

A Yes. It is, of course, true that we were very much interested in the oil and that we therefore gave Continental Oil this special consideration so that they should be able to start up production in the occupied territories of the East immediately and effectively.

Q Mr. Schlottor, did the Continental Oil, a.G. work, - actually work?

A Yes. First of all they got a lot of material together and also collected experts, and after a part of the Caucasus had been occupied, they worked in the oil fields of Maikop. They did a lot of work there, when they had the first partial results after they had opened up the drill holes, and when the first results were obtained, the Wehrmacht left the country and everything that had been brought there

was lost.

Q Was there any oil produced and brought up by the Continental Oil?

A In Maikop only small amounts. They tried very hard to produce oil and refine it.

Q Were the plants destroyed?

A Yes, they were completely destroyed.

Q By the Russians?

A Yes.

Q Did the Germans build it up again?

A Partly. As far as was possible in that short period of time.

Q Did the installations, machines and other things, - were they invested on the spot there?

A Yes.

Q Were they invested on a large scale?

A Yes.

Q You answered Mr. Sprecher's question by saying that the Continental Oil might have received property rights and later you defined it a little more and you explained that first of all the leasehold contract should be granted for the oil, and later for the oil that was produced, - property title should be granted to Continental Oil. In order to eliminate any misunderstanding, do you mean that property rights could only be obtained for oil that was already produced?

A Yes.

Q Not in the installations; the property title could be granted only for oil that was produced, but not for the installations?

A But the installations were also to revert to the

property of the Continental Oil; that was the plan that existed.

Q Pardon me. You say they were to, but I do not know any basis or any documents for that; that is why I am somewhat surprised. Was it actually carried out that everything was transferred to the title of the Continental Oil?

A I believe there was not enough time for that, but I know that Goering and his associates were firmly resolved to grant property title to those installations to the Continental Oil.

Q When?

A From the very beginning.

Q Didn't they do so with the reservation as stated in paragraph 1, after it had been incorporated into the Greater German Reich?

A No, Continental Oil was the exception; that was the exceptional case, the only one of which I know.

Q Your Ministry considered that correct?

A We were not competent for this matter. This affair was worked on in the Four Year Plan. It is true, however, that they called in the oil department of the Reich Ministry of Economics under the direction of Dr. Fischer.

Q Whose idea was it to deviate from the principle, the principle of waiting until the territory had been incorporated into the Reich? Was that Hitler's idea or Goering's?

A I believe it was Goering's. He considered the Continental Oil, A.G., as his hobby horse, and he was interested in oil. Perhaps he pursued it as a special policy as the Supreme Commander of the Air Force; at any rate, he was the one who stated that the Continental Oil Company, A.G.

was the exclusive affair of his own, and that he wanted an immediate, private title granted to it.

DR. SIEMERS: Thank you. I have no further questions.

REDIRECT EXAMINATION - continued

MR. SCHLOTTERER

BY DR. DIX (Counsel for the defendant Schneider):

Q Dr. Schlotterer, you said that from the installations in Maikop nothing was found in an undestroyed state. According to general military experience, especially in Russia one would not have expected to find the installations in a working condition in Russia; but one probably expected immediately that it would have to be built up?

A Yes.

THE COMMISSIONER: Mr. Sprecher, have you another witness?

MR. SPRECHER: No, we do not have any further witness this afternoon, Mr. Commissioner. I had another question for the witness in connection with the last series of questions, if I may.

THE COMMISSIONER: You may ask the question.

REDIRECT EXAMINATION

BY MR. SPRECHER:

Q You were asked again about the policy of not granting property rights during the duration of the war in Russia. Now I ask you whether or not the same policy was not announced by Goering, and I believe by directives signed in your own handwriting, with respect to properties in Poland, as well as in the occupied west. At the time when first the properties, the territories in question were taken over by the German Army.

DR. SIEMERS: I should object to this question. I do not believe that the affair is treated in the affidavit, and therefore, if I conform to what is in the affidavit, Mr. Sprecher should also restrict himself to what is in the affidavit.

MR. SPRECHER: The question is in conformity, of course, to the cross-examination by defense counsel, and not necessarily merely to the original affidavit. Re-direct is confined, generally speaking, to the cross-examination.

You were talking, Dr. Siemers, in your questioning, about a general

policy of the Reich in not permitting properties during the war to be divested in favor of private individuals. I wanted to point out that initially that policy had been announced in other occupied territories and my purpose was then to show that exceptions came about so that ultimately private enterprises did acquire title or did acquire some type of property rights, in those enterprises even though initially the policy of the state had been to the contrary, and we have already had an example, Mr. Commissioner, in the case of the Continental Oil Company, to show where one exception was granted in the case of Russia, and I merely want to tell you my purpose since Defense counsel made his inquiry along general lines.

If you think, Mr. Commissioner it is rather far afield, I will be glad to withdraw the question.

THE COMMISSIONER: My attitude about it is just this, gentlemen. There is some question in my mind as to your rights further to examine this witness. It seems to me that they are exhausted in re-direct, but in order that the case may possibly be laid before the Tribunal fully, but without undue extension, I make no objection to your asking the question, but now Dr. Siemers objects to the question. I think if he objects on the ground that the Prosecution's case is closed, I should be inclined to think the objection ought to be sustained.

MR. SPRECHER: I understand that he objected on the ground that the question was not directly within the scope of the affidavit of Dr. Schlotterer. That is perfectly true. I concede to that.

THE COMMISSIONER: That is so.

MR. SPRECHER: Now the next thing is as to whether on cross-examination or later, re-cross-examination, Dr. Siemers or the Defense Counsel went into the question of the general policy of the Reich with respect to the ownership of these industries in occupied territories. If they did, then the Prosecution's position is that they have opened up a field which we cannot allow to lie fallow.

THE COMMISSIONER: But your redirect at the time of the re-cross examination was objected to. That is the position I took on it.

MR. SPRECHER: Very well, Mr. Commissioner.

THE COMMISSIONER: I think that was not finished. Is there any further examination of this witness.

You have no other witnesses, Mr. Prosecutor?

MR. SPRECHER: None.

I will say that we have someone for tomorrow, have we not? A Mr. Krueger.

THE COMMISSIONER: And will he be available at 9:30 tomorrow morning?

MR. SPRECHER: Mr. Commissioner I wish that I could speak with complete authority on that matter. I have heard that Dr. Henze, - and this I may say to the defense is clearly hearsay ---

THE COMMISSIONER: I beg your pardon. The witness is excused. I forgot to excuse the witness. He is excused.

Now will you proceed, Mr. Prosecutor?

MR. SPRECHER: As I say, this is clearly hearsay. I hear Dr. Henze did see Dr. Krueger just before the week end and confirmed that Dr. Krueger was to be here this afternoon. I have also heard, by hearsay, that Dr. Krueger was heard to be near Munich, visiting relatives, and as yet we have not been able to establish official contact with him, although we have instructed our own authorities, the German authorities and the American police authorities to try to locate him.

THE COMMISSIONER: Well, it poses somewhat of a question, Mr. Prosecutor, as to what we are going to do in the way of recessing this hearing. If you think there is a reasonable possibility of Mr. Krueger being here tomorrow, we will set it over until 9:30. If not, then we will recess subject to further notice.

Now I must depend upon you to tell me what is the most advisable course.

MR. SPRECHER: May I just check and see if a telephone call came in within the last few minutes? My last advice was as of one-half hour ago.

THE COMMISSIONER: Let's recess for 5 minutes.

This hearing will be in recess for five minutes.

(Commission in recess for five minutes.)

THE MARSHAL: The Commission is again in session.

THE COMMISSIONER: In view of the fact that one of the witnesses has not shown up this afternoon for examination, and that there is a prospect of his being here next Wednesday, December 17, at 1:30, I will declare this hearing recessed until that date and we will then meet in the large courtroom, Room number 600, which has been used by the Tribunal in case number 6, and we will meet, as I said, Wednesday, December 17 at 1:30 o'clock in the afternoon, 1330. That will be all.

(The hearing adjourned until Wednesday, 17 December 1947 at 1330 hours.)

Official Transcript of Military Tribunal VI, Case VI,
in the matter of the United States of America against
Karl Krauch, et al, defendants, sitting at Nurnber,
Germany, on 17 December 1947, Justice Shake presiding.

THE MARSHAL: Parsons in the Courtroom will please find their
seats.

The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United
States of America, and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, you may report with respect to the
attendance of the defendants.

THE MARSHAL: May it please your Honor, the defendant Gajewski,
is absent and sick. May it please your Honor, all the other defendants
are present in Court.

THE PRESIDENT: The Chair regrets to announce that Judge Morris
is still ill. He has assured us that he will be present tomorrow; how-
ever, I am not so certain that he will be. If he is present, we shall
proceed with the hearing of the opening statements of the defendants.
If his physician advises that he do not come, we will recess in the
morning until January 12, at which time we will hear the opening state-
ments and then proceed immediately with the evidence of the defendants.
I am sorry that I can not give you any further assurance with respect
to tomorrow's proceedings. It is entirely likely that we may be able
to proceed without any further delay, however. There are a few routine
matters which the members of the Tribunal present would be glad to con-
sider with counsel, if it is agreeable to you to take those subjects up
in the absence of our associates. We shall, of course, undertake to
pass upon any controversial matter, but there are some things pertaining
to record and otherwise that we think might be gotten behind us, if it
is agreeable to counsel for both prosecution and defense. We are not
asking you to make any commitment at this time, but if any subject is
brought up in this morning's session which either the prosecution or
defense would prefer to have postponed until all members of the Tribunal

are present, please feel free to suggest it to the Tribunal, and we will pass it over. Those matters that you are content to have the Tribunal as now constituted consider, we will take up and make as much progress as we can.

One matter that we should like to have the record show, and that is that the Prosecution has complied with the request of the Tribunal and has now furnished us with its Brief which we requested to be filed as soon as possible after the Prosecution's case has been closed. We assume that the Briefs are also accessible to counsel for the defense.

The Secretary has called our attention to the fact that at the session of 29 August 1947, as shown by transcript Page 287, the Prosecution offered Document PS 3337 as its Exhibit 35, but the document actually filed with the Secretary at that time, by error, was PS 3373, the last two numerals being reversed. The record may now show that that error is corrected and that Document 3337 is in evidence as Prosecution's Exhibit 35 and is on file with the Secretary.

Here, Mr. Secretary, are your files.

Some time ago an order was entered by the Tribunal at the request of counsel for one of the defendants to have made available a report purporting to have been made by one Colonel Hoffmann in May 1945 and alleged to be in the possession of some American military authority. The Tribunal has a response from the chief of the defense center suggesting that, inasmuch as the documents desired are part of a voluminous quantity of material, it would expedite matters if there could be some advance indication of the particular documents desired so that the processing and photostating of the document could be simplified. The Tribunal will hand this communication to the Secretary so that it will be available to Counsel for the Defense and Prosecution, and you gentlemen may confer and advise us as to what procedure you desire to follow.

There are pending before the Tribunal motions on behalf of several defendants to require the Prosecution to make available certain interrogatories, or inquiries, that were conducted before the beginning

of the Trial. You may recall that on the 3rd of December the Tribunal entered an order setting all of those matters for argument at this hour and allowing the Prosecution and the defendants involved 15 minutes each to present their views with respect to that matter. May we inquire at this time, is the Prosecution agreeable to presenting that matter at this time before the Tribunal as now constituted? We shall now, in any event, rule on until after we have conferred with our associate.

MR. SPEECHER: Yes, sir.

THE PRESIDENT: How do the defendants involved feel about that matter? Are they agreeable to presenting their views before the Tribunal as now constituted, with the reservation, of course, that we shall not take it under advisement until we can confer among ourselves and with Judge Morris.

That was Dr. Gierlich for Schmitz, Dr. Metzler for Haefliger, and Dr. Dix for Schneider.

DR. VON METZLER: Mr. President, it would be quite agreeable for the Defense to discuss this matter now.

THE PRESIDENT: Very well. Since the motions are motions of the defendants, they are entitled to first present their views. We should be glad to hear the Defense.

DR. HELLMUT DIX: (For Schneider) I ask for the records of the interrogation of the defendant Schneider because the affidavits that he propounded treated a large variety of questions without any connection and very briefly in a manner which gives a completely insufficient picture. Furthermore, the affidavits contain many errors. For instance, the delimitations of responsibility are not correctly portrayed. The surrender of camps to the German Labor Front is treated; Schneider refused the surrender but the reason for this refusal is not given and the same is true for the fact that he did not permit an education camp to be built up. Furthermore, as I know, the number of reports to the Gestapo can not be possibly correct as stated in the affidavit. It is

a fact that defendant Schneider was interrogated at night for long hours and that because of his age and past events it might be possible that he perhaps did not recall the details very accurately because of that fact. I believe that the corrections and supplements could better be made if I would have the records of the interrogations at my disposal.

DR. RUDOLF DIX: (For Schmitz) The question is to some extent one of principle. According to principles valid with us, one may recognize that the Prosecution has the right to withhold certain documents in their secret files and not to make them available to the Defense. That is also true in our trial procedure. However, if a piece of evidence is offered to the Tribunal which is derived organically from such a document and which even sometimes represents an excerpt from such document, then these two documents belong together because the Exhibit can only be understood and interpreted from the contents of the document that was withheld. Therefore, I am of the opinion that the Prosecution is obligated to make available those interrogation records which they used to propound the affidavit which they then offered to the Tribunal. These two documents form a unit. If the offering into evidence of affidavits of the defendants is to be admissible at all and if in this way one treats the fundamental principle that the voice of the defendant can be heard in the main trial without his will, which is a question for which we reserve the right to take a stand at a later time, then one must at least produce everything which may help for the understanding of such an affidavit. For these fundamental reasons and considerations referred to in individual case, my associate, my colleague Gierlich, at the time made the motion to have a certain interrogation surrendered to him and for these considerations I ask the Tribunal to admit and to sustain my motion.

DR. VON METZLER: The explanations which my colleagues have made on this subject are so exhaustive that I have no further comment to add on behalf of my client.

THE PRESIDENT: We hear the Prosecution.

MR. SPEECHER: May it please the Tribunal, none of the applications concerned contemporaneous documents made during the Nazi era. All the applications concern statements made by the defendants either after the German collapse — and before the indictment. All statements are either made to representatives of various Allied agencies or to the Office Chief of Counsel for War Crimes. The discussion this morning by the Defense has referred only to the latter category, but actually if you look at the applications you will see that at least on their face they may be interpreted more broadly; and since that problem may be involved at least according to the fact of the affidavits, the Prosecution would like to make its answer to both types. Is that agreeable with your Honors?

THE PRESIDENT: That will be.

MR. SPEECHER: Now, it is therefore important to distinguish between the individual applications, since each of them involves some different problems, and then to categorize the types of statements for the purpose of argument and analysis.

The application on behalf of the defendant Haefliger is for "all statements and affidavits of Paul Haefliger, which he made, before the Prosecution, namely, NI-8972, NI-7058, and NI-1309." The reason why the defendant knows the document numbers is because one of my administrative assistants gave the document numbers to him; I thought you might be interested in that. The affidavit NI-8972 was made before an attorney of the Prosecution on the 23rd of April 1947. As a matter of courtesy, but not of obligation, in our view, the prosecution has made a general practice of either giving a copy of such affidavits to the affiant at the time of execution or else giving him a copy later upon formal application. Accordingly, a copy of NI-8972 in both German and in English has been given to the defense counsel for the defendant Haefliger.

With respect to the other two, the Prosecution does make objection.

Now, NI-7058 is a series of three form questionnaires which Haefliger filled out and signed shortly after arrival in the Nurnberg jail. None of them are formally sworn to and none of them are expressly dated, although they were filled out in Nurnberg during the last several months before the indictment. NI-1309 is a statement which the defendant Haefliger forwarded on 17 June 1945 to the American military authorities in Frankfurt concerning the "attitude of Mr. H. Schmitz" -- that is the defendant Schmitz -- "and inside facts about inner construction of I. G. Farben." This is not an affidavit and it was not given at the time of creation to any representative of the Prosecution. The Prosecution does object to the latter two documents.

The application on behalf of the defendant Schmitz is for "all statements and affidavits of Geheimrat Schmitz made prior to his indictment." For the reasons stated above, the Prosecution either has turned over or will turn over to the defense any affidavits which the defendant Schmitz made before representatives of OGCNC. The Prosecution does object to turning over any statements, interrogations or affidavits which the defendant Schmitz made before other agencies than the Prosecution and to furnishing transcripts of any interrogations of the defendant Schmitz other than those which the defendant Schmitz made in Nurnberg. There are involved a number of statements given to both American and British investigators in 1945 and 1946.

The application of the defendant Schneider is for the interrogation transcript of an interrogation of the defendant Schneider made on 27 March 1947 before representatives of OGCNC. The defendant's counsel, strangely enough, requests this transcript for the purpose of "cross examination of the defense concerning affidavits of the defendant Schneider." Before I go further, I would like to point out that the affidavits were made on different days than the day on which this interrogation was taken. They were made some days later and as customarily with all the affidavits which have come before your Honors, if you will look at the last lines, you will note that the affiant states that he

has had an opportunity to read through each of the pages, to make corrections, and to make any changes which he wants to make voluntarily. Now, many times those changes require re-writing the affidavit, but I think if you will look at the affidavit in question, the copy which the Secretary has, you will see that there are changes even on the last corrected copy which finally became the final affidavit.

Now, these applications will be considered under two categories:

First, transcripts of interrogations taken by and upon the initiative of other agencies than OCCWG and statements or affidavits given by the defendants to representatives of other agencies than OCCWG.

And then, secondly, in the second category, transcripts of interrogations or unsworn statements and questionnaires given to representatives of the Prosecution before indictment.

Taking up the first category, that is, interrogations taken by and statements or affidavits given to other agencies than the OCCWG: This category, on principle, reaches questions of jurisdiction as well as general policy. The Prosecution is often entrusted with parts of the investigations of various Allied and various American agencies concerned with many questions in many different matters. Prosecution has often given such investigations in confidence. Some are formally classified as "secret" or "confidential". Some are subject to the outstanding rules of security in the Theater of Operations and some are subject to the rules of just good, common sense. Now, even if there were good grounds for otherwise furnishing such materials to the defense, the Prosecution would not be free to surrender materials falling within this category without the consent of the agency which obtained them or upon consent of the appropriate intelligence agency of the Allied or Government Army involved, or by the consent of both.

The investigations of other agencies have often involved interrogations of defendants or possible defendants confined in Nurnberg. Sometimes these interrogations are made after the defendants or possible

defendants are in Nurnberg; however, most frequently they have been made before these persons have been confined at Nurnberg. Such investigations come up in connection with other war crimes trials or with administrative functions of governmental agencies concerned with the assets or property of German nationals, the de-Nazification of German nationals, the placement of German nationals in present positions of responsibility in government and industry, etc. (For example, — and this is somewhat in point in connection with one of the documents here involved — the Department of Justice, the U.S. Treasury, and other agencies are still concerned with those external assets of I. G. Farben, of its subsidiaries or of agencies with which Farben had intimate connections.) Obviously, the Prosecution is not in a position to violate security regulations or the confidence with which it has been charged expressly or by good common sense in connection with being given access to these materials. In many cases the Prosecution would have difficulty in ascertaining or, indeed, presuming to decide by itself whether security questions were involved in releasing some of the documents in its possession. Now, the reasons just given are special and to a certain type of document which we consider to be in our confidential file, and the reasons which I give unto the second category are meant likewise to ally to the first category.

The second category then concerns transcripts of interrogations and statements on questionnaires of the OCCWC. The pre-indictment investigations of the Prosecution, of whatever form or nature, are confidential material of the Prosecution unless divulged by the Prosecution for good reason, as we see it. It is respectfully submitted that they should not be turned over to the defendants or any other persons, whether Allied or German, such materials, without the Prosecution's consent.

Such materials often contain references to other defendants than the defendant in question, and they often contain references to persons

who may be indicted in other cases. We submit that it would be difficult, and sometimes impossible, for a Tribunal to place itself in a position of weeding out pre-indictment materials of the Prosecution which concerned only one defendant from materials concerning other defendants or possible defendants, or other persons who may never become defendants. The specific purpose of the Defense in making the applications or any real necessity for securing the documents sought certainly does not appear on the face of the application, and I must say that on hearing the arguments of the defense this morning, I can see absolutely no good reason why the defense needs these materials, quite apart of any consideration of policy, practice, or precedent.

The defendants have already informed their Defense Counsel, as we heard from Dr. Dix for the defendant Schneider, for example, that there are certain errors and certain improper connections in the affidavit. The defendant Schneider is free to explain those. If he does not wish to take the stand, then he is denying himself that possibility, and no one else is denying it to him.

Before I proceed with the rest of my argument, I would like to point out that I think there has been perhaps a little different emphasis on German law than several German lawyers have given, at least, to the Prosecution on this question. There is no exact precedent in German law which fits this case. In German criminal cases investigators of the Court, often pre-trial judges of the Court, conduct interrogations, and if those are used by those representatives of the Court, and are made accessible to the court, then Defense Counsel has access to them. The only similar precedent here would be that Your Honors have been given access to the affidavit itself, and, of course, that is the document to which you have access. If the Prosecution were trying in some way to use the affidavit in order to have Your Honors draw some inference, without giving you the affidavit, that would be in point.

Now let us look at each of these applications and see what is stated on them. The Kaefliger application merely states the reason the matter is required as "To prepare the defense." The Schmitz application states no more by saying "For the purpose of preparing the defense." The Schneider application states no better ground, but it gives a much better clue: "Cross examination of the defense concerning affidavits of defendant Schneider". It is strange, indeed, that the defendant Schneider seeks copies of his own interrogations so that his Counsel may cross examine him. The applications are blank significantly enough where the application should show the facts to be established by the documents sought in the application. The Prosecution suspects it is not original in deducing that the major purpose, if not the real and only purpose, of the

applications is to avoid later impeachment of the defendants in question and perhaps later impeachment of other defendants. But impeachment is a right of the adverse party, and if the defendants are intent upon telling the truth, they scarcely need to worry about being confounded by prior statements which they have made to the occupation authorities.

Prior statements made to the occupation authorities have become a traditional part of the material which have been used in all war crimes trials to assist in keeping testimony a little closer to the truth. The aids and means to ensure truthful testimony by persons charged with crimes in these cases are little enough. The fact of false testimony by at least some defendants is to be found in or deduced from every judgment handed down in Nuernberg. A defendant who could go over each and every statement he has made in an interrogation, whether it involves him or his co-defendants, is in a particularly good position to adjust or orientate his defense and his testimony. Any other defendant involved would likewise be able to orientate his defense in anticipation of possible impeachment by means of such statements. For these and other reasons stated above, no Tribunal in Nuernberg nor the IMT has ever directed the production of such materials to our knowledge.

I would like to call your attention to a few of the prior rulings which have come to our attention. This question, of course, is not new in this case itself. For example, on 6 June 1947 Dr. Boettcher on behalf of the defendant Krauch, applied for the records of the interrogations of Dr. Karl Krauch and all affidavits and statements of Dr. Karl Krauch. In its answer of 13 June 1947 the Prosecution followed its usual practice and voluntarily agreed to furnish "all affidavits given by the defendant Krauch to representatives" of OCCWC, then it appeared to the Prosecution that no security and no special policy problems did appear to be involved. However, the Prosecution objected to furnishing all other interrogations, affidavits, statements, etc., for the reasons which we have now submitted here. Judge Toms, then acting as presiding Judge of all Tribunals, ruled

as follows on 23 June 1947: "The objections of the Prosecution with reference to the interrogations of Dr. Karl Krauch are sustained. The Prosecution having voluntarily furnished the affidavits of Dr. Karl Krauch no order is necessary in this respect."

The first Military Tribunal sitting in Nuernberg Tribunal No. I Case No. I, the S² Medical Case, denied a similar application by the defendant Brack by order of 24 February 1947 signed by presiding Judge Walter B. Beals. The Tribunal had previously granted this application by an order of 12 February 1947 because of a faulty impression derived from the nature of the application; but upon reconsideration the Tribunal reversed itself and denied the defendant Brack the right "to examine the stenographic notes taken at preliminary interrogations pursuant to which was prepared the affidavit which he signed October 14, 1946, and which has been admitted in evidence before this Tribunal". Of course, the ruling is one hundred percent in point with the exact facts presented by the application of the Defense Counsel Dix for Schneider.

Tribunal No. I noted that Brack in his affidavit had sworn that the declarations in his affidavit were true to his "best knowledge and belief", and that he had had an opportunity to make changes and corrections in his affidavit. I have already pointed out that that is also true here. In the order the Tribunal reserved to the defendant Brack the right to renew his application "whenever he shall take the stand as a witness before the Tribunal at which time the Tribunal will announce its rulings on the matter." The matter never rose again so far as we know. In any event, the Tribunal never changed its ruling. Now in the argument before the ruling was made, the Prosecution had argued that "the defendant Brack will have ample opportunity to make any explanations with respect to the affidavit when he takes the stand in his own defense". The Prosecution also argued that "proof of prior inconsistent statements may be used to impeach or contradict a witness by the Prosecution, but it is submitted that prior consistent statements are scarcely admissible by the proponent of the witness to prove his veracity". The Prosecution further argued that the application would

"open the door improperly to defendants in obtaining access to voluminous confidential files of the Prosecution". I think it might be pointed out here that if full faith and credit were given to the reasoning which was made by Dr. Dix for Schmitz this morning, then we should have to present to your Honors the interrogation transcript of many, many other Affiants here so that the Defense in connection with those matters could present to Your Honors the very voluminous interrogation materials to compare with the affidavits; and then if we carried the matter to its complete absurdity we might have a situation where the interrogator, who did not make a transcript of this interrogation, would have to be called to the stand before Your Honors in order to testify to the detailed facts concerning the circumstances and all the side matters which he and the interrogated or later Affiant went over in their discussions.

Now Military Tribunal II-A, Case No. IX, the Einsatzgruppen Case, made a similar order to that of Tribunal No. I previously referred to on 18 October 1947. The order itself states the facts and the question decided amply for an understanding of the significance of the order: "Tr. Bergold, attorney for the defendant Ernst Biberstein, has requested the production of the 'Interrogation Transcript of 29 June 1947' of the defendant Biberstein. In view of the fact that this interrogation transcript has not been introduced in evidence, and has not been used by the Prosecution in the presentation of its case against Ernst Biberstein, the request is disapproved."

Now I can't give you the exact citation in the Justice Case because the formal papers have been forwarded to Berlin, but Mr. LaFollette, Chief Prosecutor for the Prosecution, had informed me prior to the time we wrote up our objection to the Krauch motion previously referred to that the matter had also arisen in the Justice Case and that he had argued among other things that this was similar to a request for pre-indictment notes of the Prosecution in a grand jury sitting. I personally am not too familiar with those matters, but Mr. LaFollette said he placed considerable reliance

"open the door improperly to defendants in obtaining access to voluminous confidential files of the Prosecution". I think it might be pointed out here that if full faith and credit were given to the reasoning which was made by Dr. Dix for Schmitz this morning, then we should have to present to your Honors the interrogation transcript of many, many other affiants here so that the Defense in connection with those matters could present to Your Honors the very voluminous interrogation materials to compare with the affidavits; and then if we carried the matter to its complete absurdity we might have a situation where the interrogator, who did not make a transcript of this interrogation, would have to be called to the stand before Your Honors in order to testify to the detailed facts concerning the circumstances and all the side matters which he and the interrogatee or later affiant went over in their discussions.

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on that. In any event, he was successful in his argument, and Tribunal No. III in the Justice Case followed the precedent set by Tribunal I.

Now it is, therefore, respectfully submitted that the Tribunal should deny the applications as a matter of general principle in line with the precedents. If, however, the Tribunal is in doubt as to the propriety of such a general ruling, it is requested that the applications be denied now with leave to the Defense to refile applications which state the facts sought to be proved, since this is now missing from the applications, at the point where there is room and directions that such facts be stated, and further that the Defense be required to specifically state in detail the relevance of the facts sought to be proved, and, indeed, the relevance with respect to each of the alleged necessary documents which the Defense seeks.

DR. RUDOLF DIX: I regret that Mr. Sprecher did not take a stand about the fundamental points raised by my colleague and by me and that he could not do that because the manuscript of what he said had been made before he heard what was said. I believe that the principle as outlined by us here corresponds to a sound and disciplined, logical legal conception. If a record which antedates the Indictment has any connection with evidence produced during the main trial, or if the latter constitutes only a summary of what is contained in the former evidence, then I believe that it is simply impossible to reject the motion to find out what is contained in the former evidence. Mr. Sprecher did not answer this aspect of the case.

11 However, I go further than that, and I shall limit the notion
12 of my colleague Gierlich to these two aspects. If the document be-
13 fore the Prosecution at the present time contains facts which legally
14 speaking are of specific importance for the findings and for the
15 Indictment, then they belong to the files to which the Defense should
16 have the right to have access to without question. According to this,
17 such documents and such interrogations are not kept with the Prose-
18 cution's secret files according to our general trial procedure, but
19 documents which are of evidence-producing nature are filed with the
20 court files, and the Defense Counsel have the right to look into
21 these files.

It is also an error if Mr. Sprecher is of the opinion that the German pre-trial judge is a member of the Court; he is not such a member. He is an independent judge apart from the Tribunal, but because his records are of specific importance for the charges against the defendants, therefore, the Defense have the right to look into them.

According to these two principles, first, the contextual connection, that is, that it is the fundamental and the basis for the affidavit, and, secondly, the document is of specific importance for the charges to be raised, I limit the motion of my colleague Gierlichs, and I make the motion here that those documents be made accessible to the Defense which correspond to these two postulates.

I have just received a note which is difficult to read. Give me a few moments so that I may read it over, please.

I have already covered part of what is contained here. However, I should like to add this: The Tribunal will certainly know the procedure followed when these affidavits are produced and will know how this is handled. The affiant has had submitted to him the completed text. Of course he is told that he may make changes and corrections, but these changes are contested. He is told sometimes

"You may say that later. That is of importance for the Defense. We are the Prosecution. We are interested in something else." A layman in the situation of an arrested person cannot be expected to have the presence of mind to say, "That may be, but I am obligated to tell the truth, and if I only tell you part of the truth, then I am telling you an untruth." That is not to be a reproach, but it is proof for the fact that the probative value of the affidavit submitted can be evaluated correctly only if I have the records of the interrogation, if I know them, because the affidavit is only a compilation of these records.

Therefore, I repeat my motion as follows: All records of interrogations are to be submitted which constitute the contextual basis for the affidavit submitted and the contents of which contain facts, or to put it differently, the contents of which are of a specific importance for the charges raised against the defendants.

DR. HELMUTH DIX: I should merely like to supplement and say that the police interrogations in Germany are also made part of the record and files and are made accessible to the Defense. The statements made by the Prosecution were interesting because they show the connection between the propounding of the affidavits and the former testimony. Please note: The affidavits are termed voluntary because they show the connection between the propounding of the affidavits; however, the previous interrogations are very often involuntary because they take place by reason of the special laws issued by the Military Governments of the Allies. Soon after the collapse regulations were issued which were binding for officials and industrialists to give testimony. Therefore, these statements were not made voluntarily, and it is humanly understandable that, therefore, the affidavits cannot be termed voluntary in the sense of this word. This shows the connection between the records of the interrogation and the affidavit. It is not possible for the Defense

to indicate what facts they want to know especially in the case of the defendant Schneider where long night interrogations are concerned which he cannot remember in detail.

THE PRESIDENT: Anything further, gentlemen? If not, we shall treat this argument as closed, and we have already indicated that the matter will be taken under advisement. However, just in passing and not speaking for the Tribunal, I may say that it now appears that there are two classes of documents here involved: one, information that has come to the Prosecution from or through other agencies that may or may not be of a confidential nature, and the other that more directly relates to the affidavits that were introduced in evidence. I think we may all recall a showing somewhat of a consistent policy on the part of the Prosecution with respect to this latter phase, that is, that interrogations were conducted. After they were completed, then affidavits in the form in which they were offered in evidence were prepared, and the defendant or the witness then signed and swore to the affidavit which has become an exhibit in this case. Without indicating any view whatsoever, I think it might be appropriate to call your attention to the fact that as it relates to defendants, the Tribunal ruled that those were in the nature of admissions and were competent evidence on that ground.

I think you will recall an instance or two where we said, because of the particular instrument that was involved, that we were unconcerned with whether or not it was a sworn document. If it was a memorandum of any kind that emanated from a defendant and related to the issues in the case, we considered it competent as an admission.

Now, just for your thinking, let me suggest to you: Assume that a defendant has made an admission in the form of a statement or an affidavit which the Prosecution has introduced in evidence, and he says that contemporaneously with that statement: "I answered interrogatories which are in writing and which are in the possession of the Prosecution that bear upon the same subject, and I wish them to be considered in connection with the statement or affidavit in evidence." That, it occurs to me, personally, is an entirely different matter than the other aspect, where the Prosecution has come into possession of some interrogations or statements, that have been made to some other agency or some other department, that are in its possession and which may or may not be, as I say, of a confidential nature. I mention that just for this reason, that there has been no reference to a well-considered and understood principle of Anglo-Saxon law that may or may not have any bearing upon this subject. That is that when, in the course of a trial, it develops that the adverse party has in his possession evidence that may or may not establish his side of the case or may or may not aid his opponent, and a timely demand is made for the production of that evidence and the demand is refused by the party who has the evidence, - it justifies a presumption on the part of the trier of the facts that if the evidence had been produced it would have been adverse to the party withholding it.

Is there anything further to be said now on this subject? --

If there is nothing further, then may I remind you that some time ago the Prosecution filed a rather lengthy list of technical corrections of our record. It is our understanding that those were put in the hands

of the defendants to be checked. Are you yet ready to say, gentlemen, as to whether or not an order may be entered directing the correction of the record, as requested by the Prosecutor?

DR. BOETTCHER: Mr. President, we are still investigating the matter, but we shall give you an answer before 12 January.

THE PRESIDENT: Very well.

Now, gentlemen, is there anything further to come before the Tribunal at this time, that anyone wishes to suggest as being proper for consideration?

MR. SPRECHER: Mr. President, if I may speak before Dr. von Mettler, since he has informed me that he wishes to raise a new subject, I would like to make only one statement concerning the remark of the President just now. It seems to us that the American rule which you announced is certainly a very excellent rule of reason for application anywhere, so long as contemporaneous documents are involved, or statements by other persons which could not be repeated. But here where those statements could be repeated — at least in the absence of some showing that the defendant no longer had control of his speech, or to some such matter — the Prosecution is indeed not withholding anything in the nature of evidence, which is keeping something from the defendant.

Now, the other thing we would like to say is that, of course, all kinds of principles taken in the abstract can be announced and, among others, is one concerning the confidential nature of files and some of the policy problems surrounding that. And these principles have to be taken into consideration together when they come into a question of conflict. Where the injury is not great or non-existing to the applying party, we certainly think that the policy reasons should be given weight, and the determination made in view of the policy reasons.

DR. HELMUTH DIX (for defendant Schneider): I should like to answer that very briefly. I understood Mr. Sprecher to say that he did not consider it necessary to produce the records of the interrogations because the defendants can be interrogated and examined about it. But this aspect

of the defendants to be checked. Are you yet ready to say, gentlemen, as to whether or not an order may be entered directing the correction of the record, as requested by the Prosecutor?

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Now, gentlemen, is there anything further to come before the Tribunal at this time, that anyone wishes to suggest as being proper for consideration?

MR. SPRECHER: Mr. President, if I may speak before Dr. von Metzler, since he has informed me that he wishes to raise a new subject, I would like to make only one statement concerning the remark of the President just now. It seems to us that the American rule which you announced is certainly a very excellent rule of reason for application anywhere, so long as contemporaneous documents are involved, or statements by other persons which could not be repeated. But here where these statements could be repeated — at least in the absence of some showing that the defendant no longer had control of his speech, or to some such matter — the Prosecution is indeed not withholding anything in the nature of evidence, which is keeping something from the defendant.

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DR. HELMUTH DIX (for defendant Schneider): I should like to answer that very briefly. I understood Mr. Sprecher to say that he did not consider it necessary to produce the records of the interrogations because the defendants can be interrogated and examined about it. But this aspect

was raised by us. He said the examination of the defendants is the better evidence. However, it was differently handled. The affidavits were submitted and, therefore, it is proper that the records of the interrogation should be submitted which were in connection with the affidavits.

DR. VON METZLER: Your Honors, my colleagues have instructed me to read a motion into the record on behalf of the Defense. This motion has been filed in writing with the Secretary General, together with the necessary copies; and I may briefly state for Your Honors' convenience the purpose of this motion.

This is a motion for a finding of Not Guilty as to the charges under Counts I and V of the Indictment, and as to the charges concerning the alleged cases of spoliation in Austria and Czechoslovakia.

THE PRESIDENT: Is the motion on behalf of all defendants?

DR. VON METZLER: Yes. Now, my colleagues feel that this is a motion of such a fundamental importance that it should be read with Your Honors' permission into the record; and, therefore, we would respectfully ask for Your Honors' permission to do so and, if it would be agreeable to Your Honors, to recess now for a short period because the reading of this motion will take some time.

THE PRESIDENT: About how long?

DR. VON METZLER: One and a half hours.

MR. SPRECHER: Mr. President, for the very reasons announced by Defense Counsel, it seems that this would be an unnecessary wasting of record and paper — to put it no other way. The matter is in writing; it was suddenly raised here. The uniform rules are clear that these matters are to be filed in writing and that the Tribunal, as well as the adverse party, then have some opportunity to be ready the first time the motion comes into the atmosphere of the court room. Obviously, the Prosecution is in no position now, nor is the Tribunal.

THE PRESIDENT: Has the Prosecution seen the motion?

MR. SPRECHER: No, and we see no reason why this should be, as a surprise matter, raised here and now.

THE PRESIDENT: The element of the surprise is not injurious to the Prosecution for the reason that, of course, the Tribunal would not undertake to take up such a matter of this character until the Prosecution had had the prescribed time to consider it. However, I am wondering as to what reason there can be, Doctor, for getting it on to the transcript, if it is a written and filed motion and becomes part of the record.

We do not begrudge you the hour and a half as to anything that you may consider to be important, but frankly I am at a loss to understand any good reason for duplicating the motion in the proceedings of the Tribunal. If you filed it, it is on our desks; it will be considered, and it would impose a burden of transcription and translation, and that occurs to me as being rather unnecessary.

MR. VON METZLER: Mr. President, may I point out that I have handed the German version of this motion to the interpreter so that the motion can be read very fluently and without any hitch. And we were under the impression that this session was specially reserved for motions and applications which were to be made before the opening of our case. As far as I can see, this is a motion which has to be made before the opening of the case of the Defense, and as it is really a matter of utmost importance, raising the question of Guilty or Not Guilty, we feel that, if it should be convenient to Your Honors, that we should be allowed to read this motion in open court.

THE PRESIDENT: Certainly are you within your rights in making the motion at this time and in preserving the situation of having it presented before the Defense opens its case. I was only speaking with reference to the reading of it and the imposing of it on the transcript. I am somewhat at a loss to understand any sound reason for burdening the mechanics of the administrative side of our Tribunal.

I may say that you are within your rights in filing it; you are within your rights in having the Tribunal note and recognize on the record that it has been filed. We certainly would accord you that. It just occurs to me that perhaps your hour and a half might, at some subsequent time, be put to better use in just giving us your views as to why you think the motion is well taken -- and it well may be. We should like to hear you for that length of time or longer on that subject. In the meantime, we can and will read your motion and familiarize ourselves with it.

Let us confer a moment about that, and we will take our recess at this time.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. RUDOLPH DIX: Your Honor, you have permitted me to talk to you with reference to the reading of the motion. Your Honors, this motion is not of controversial nature. It refers to no procedural questions, and it refers to no questions regarding jurisdiction. It does not refer to any of these matters, even in its reasons. On the other hand, from a material point of view it is of paramount importance. Only if you take into consideration Mr. Metzler's request to the effect that at this stage of the proceedings, that is before the beginning of the case in chief of the defense, a "not guilty" is pronounced in two counts of the indictment.

We are here concerned with a public proceedings. The public nature of the trial is an old, fundamental, democratic principle. It has been fought for with the blood of revolutionaries a long time ago. Publicity does not just mean the pacification of a lust for sensation of public opinion, but publicity means that the public is to have the right, is to have the claim, to be fully informed of important, here truly decisive questions which are of importance for the judgment of the Tribunal.

This claim is not being pacified by perhaps an objection that the press will receive all of the records of such proceedings; through the records and transcripts the gentlemen of the press will certainly know all about the important reasons for that motion, but that of course does not apply to the public at large.

All persons who are here in this court room and not as press representatives but as part of the audience, are the only ones here who represent public opinion. The press is not always able to transmit to the public the entire content of

what is being discussed in this courtroom. It is my opinion, therefore, that it would constitute a violation of a fundamental principle of juridical procedure, namely the nature of publicity, if it would not be permitted that such an important motion should be dealt with only by way of writing.

It would be a procedure by writing instead of a public procedure. This is the reason why the defense thinks it is so very important to read the reasons for this motion in public.

With reference to the point of view of time, we have today is a favorable date, because we have time at our disposal. I think there is nothing before us today with which we would have to deal, and which would be delayed by the oral presentation of this motion.

That is all I have to say with reference to the principles involved. Concerning the administrative work, I do not mean the work of the Tribunal, but I am talking about the administration. No time is saved if the matter is dealt with by way of writing.

The motion is made orally the presentation becomes part of the record, and is going to be mimeographed, together with the record. If this was handed in writing, such a motion would have to be mimeographed especially for that purpose. I therefore believe that the administration will also do much better if our request is being adhered to and as I already said before, the question of time plays no big part today.

But of course, there are merely sidelines; the most important thing is the principle involved: of maintaining the publicity of this trial. This should constitute no prejudice. I am clear in my mind that expediency and tact often demand,

in the case of such motions, that the matter be dealt with by writing, but these points of view may be entirely disregarded here.

THE PRESIDENT: The Tribunal is fully aware of the fundamental concept that courts should be open to the public, and that judicial proceedings should not, - except in very rare exceptions, - be conducted behind closed doors. We are heartily in accord with that principle, but there are some other principles that control the administration of justice. We recall that it has been said many many hundreds of years ago that it was the function of a Court to administer justice speedily and without delay, freely and without purchase, completely and without denial. That responsibility is on the Tribunal, and that is why it is necessary to adhere to certain rules of procedure in order that those objectives may be achieved. We have indicated before that we do not begrudge an hour or an hour and a half, or two hours, to hear anything that counsel for the Defense consider of importance, but if we indulge that privilege to counsel for the Defense, we shall not be in any position to deny it to the Prosecution to read its answer, and then again to deny to the Defense its reply, and when all of that has been done, we shall have nothing before us but what would have come to our attention in the usual way, by the filing of the document in the office of the Secretary General, and most likely, at least probably, we should want to be enlightened and then would have arguments in addition to the reading of the document. We think that counsel for the Defense is asking us to establish a precedent that would be time-consuming, and wholly unnecessary, and perhaps unduly delay the speedy determination of the issues in this case. We dare say that the document to which counsel

for the defense have referred is certainly no more important than the indictment in the case upon which the Prosecution is based, and you gentlemen will recall at the very first day of the sessions we dispensed with the reading of the indictment because under the rules it had been served upon the defendants, and they each said that they had read it. Our answer to this request is that your motion will be read by the members of the Tribunal, and after counsel for the Prosecution have filed their answer, if they see fit to file one, if the Tribunal is troubled about to what its decision should be, we shall give you an opportunity to be heard as to the merits of the proposition.

The request to read the motion is now denied.

The record may confirm what counsel for the Defense has said, that the motion has been filed in the office of the Secretary General. It is now a part of the files of this case. It is no secret document. It is open to the press, to any American or German citizen, or any other person that may have any interest in it, and the objective of a public and free trial have not been denied by this ruling.

I believe the Prosecution indicated that it had not seen this motion. We understood from counsel for the Defense that it is on its way to you, and we assume, of course, that you will give it prompt consideration and make Your response to it. As soon as we have your response, and have seen the motion, we will determine whether or not we should like to be enlightened further by counsel with reference to the motion.

MR. SPRECHER: Mr. President, on the question of time, may I just say a few words? I mean on the time to answer.

THE PRESIDENT: Yes.

MR. SPRECHER: The motion is 23 pages long in the English. We were just given a copy of the interpreter's copy, that had been made by the defense, and we would like to ask more time than the usual 48 hours, particularly in view of the fact that the Prosecution has been working a little bit over time in connection with getting out the briefs.

THE PRESIDENT: We are troubled a bit as to just what may be ahead of us, because of the situation with which the Tribunal is confronted on account of the illness of Judge Morris. It is entirely likely that we may have to postpone the opening statements until the 12th of January. We hope not. If that does occur, certainly there would be no reason for not granting the Prosecution some more time to answer, and on the other hand if we do have the opening statement tomorrow, you won't be required under the rules to answer before tomorrow, so in either event, it would not delay the progress of the case to grant some reasonable time to the Prosecution to file its answer.

Are you in a position to indicate, Mr. Sprecher, how much time you would desire?

MR. SPRECHER: Mr. President, under the circumstances, and particularly since the Defense evidence would not begin until the 12th of January at the earliest, we would like to have until a few days after the beginning of the New Year to make our answer to this motion.

THE PRESIDENT: That position is well taken. On the other hand, if there is merit in the motion, and if the motion should be sustained, and is ultimately sustained in whole or in part, Counsel for the Defense are entitled to that information before they make their opening statements, if we can accord them that privilege.

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If you will indicate what day early in the first of the year, we will undertake to give you a decision and fix a time for the filing of your answer.

MR. SPRECHER: We understand that is, without a calendar present, the first of January is on a Monday. We would like to have until that Monday to file this, in view of the fact that the holiday session just precedes it.

THE PRESIDENT: Does Counsel for the Defense feel that that is an unreasonable request?

DR. BOETTCHER: We are in agreement, Your Honor.

THE PRESIDENT: Very well. That will be the order of the Tribunal, that the Prosecution will have until Monday, January 5 to file its answer to the motion under consideration.

Now, gentlemen, if Judge Morris is able to be here tomorrow we shall feel under compulsion to proceed nevertheless with the opening statements and without prejudice to the rights of the defendants under the motion presented today.

DR. HELMUTH DIX: It has come to my attention that in the meantime the reply of the Prosecution to our request to travel abroad, has come in. It is my impression that this reply did not in detail refer to our point of view. In reply as far as I have heard, travels to Czechoslovakia and Poland are being dealt with and in this connection I should like to point out that the possibilities of investigation in these countries are very limited to us, and partly even impossible.

With respect to these countries therefore we made no request. The difficulties which exist in these countries I shall explain also when presenting my evidence. It is, however, very important for us to have an opportunity to visit the country to the west and to the north of Germany.

Let me again point out to you, that as Mr. Sprecher has emphasized before the recess, the Prosecution has the right of incrimination. The Prosecution should make use of this right, but on the other hand, it is necessary for us to collect all material in favor of the defendants, in order that there should be a just picture of how the situation really is.

DR. ASCHENAUER, (for Gattineau):

I believe a confusion arose a little while ago. There is not only one application before the Tribunal, but two such applications. In the case of my application which I filed on the 9th of this month we are concerned with merely one legal issue. According to this motion, the Tribunal is asked to decide upon the significance of the secret agreement which was reached in Moscow on 23 August 1939, and how it affects Control Council Law No. 10.

It further refers to the claim that Control Council Law No. 10 is invalid in view of International Law, and therefore presents no proper foundation for this trial because a State was a co-signatory to that law which was itself actively participating in the aggressive war, the planning and waging of which was being indicted according to this agreement in question.

Since we are concerned with a proper procedural objection in this case, and not a mere motion, I should like to give you the reason for this motion here during the opening session. These matters cannot be discussed in Chambers, but must be brought out into the open.

The Prosecution on their part has its arguments --

MR. SPRECHER: May I interrupt? The reason for my interruption, -- a thing which I strongly dislike to do, -- is that some reference is being made to a motion of which the Prosecution has never heard. I think I need say nothing further.

DR. ASCHENAUER: Mr. President --

THE PRESIDENT: Just a moment, please. Counsel for the Defense who just preceded the one now before the Tribunal, was speaking on an entirely different subject, and that is with respect to facilities for making inquiries in foreign countries as to available evidence for the defendants.

Counsel now speaking is devoting his remarks to another subject. It is going to be a bit confusing to the Tribunal if we do not draw a line between the two, and dispose of them separately. If counsel now speaking will stand aside for a moment, we will give consideration to the first subject and then we will take up what you have to say.

Now with reference to the request made by Defense counsel for travel in other countries to interview witnesses for the defendants, the Tribunal has tried to make it clearly understood in regard to that matter, that that involves many questions over which this Tribunal has no jurisdiction whatever, that is matters of military governments, matters of travel in foreign countries, and matters of exchange of funds, over which we have absolutely no authority.

We would like to make our position clear. We shall, insofar as we can, cooperate with counsel for the Defense in every respect, in the preparation of their case. We shall consent to counsel, or part of counsel to absenting themselves from the trial on their request, we shall approve their application to travel, if proper clearance can be obtained. We encourage or request whenever we can, that proper consideration be given to their desires in that regard, but further than that, this Tribunal cannot go, because it is entirely outside of the field of our functions and our authority.

If Counsel for the Defense can work out any plan to accomplish their desires, and will come to the members of the Tribunal in Chambers, we shall give you letters, statements, anything within reason, that will facilitate your objective, but unfortunately we are not in a position to issue directives that are binding or forceful with reference to military authorities or foreign governments.

I hope we make ourselves clear in that respect. You will find us cooperative, but we have very limited powers of

cooperation.

Now, Counsel, with respect to the matter about which you are speaking, did you file your motion in the Defense Center, and has it been processed and made available to the Prosecution?

DR. ASCHENAUER: Mr. President, this procedural objection was already made on the 9th of December, 1947, and the Prosecution has had an opportunity to define the attitude toward it. I received through the Translation Division confirmation that the Prosecution has received this motion.

MR. SPRECHER: Mr. President, I certainly do not want to challenge in any way what defense counsel has just stated, and I am not speaking personally, just so that there is no mistake. I am also informed that the Secretary of this Tribunal has not received a copy.

Now without saying whose fault the matter is, the matter simply is that the motion in question, for some reason, has not been processed.

THE PRESIDENT: Errors do occur and sometimes miscarriages of documents occur for which no one, so far as counsel is concerned, is to be charged with responsibility. However, we do have a well-established practice which in the interests of orderly procedure, it is necessary that we follow. We suggest, counsel, that you check the proceedings and ascertain whether or not your motion was duly filed, was translated and distributed in accordance with the rules. If you find that it has, then we will be very happy to hear you. If it has not, then do that, and when the procedure has been complied with, we will listen to your observations.

DR. ASCHENAUER: Mr. President, I can give you your answer immediately. The Secretary General has handed the translation to the interpreters, and the interpreters have it today before them. The interpreting branch has this

translation in their possession, and I cannot see why I should be made responsible for this error which is obviously on the part of the Prosecution. And....

THE PRESIDENT: An error has occurred, of course. You are not responsible for it, but on the other hand, if Counsel for the Prosecution had filed some document and desired to present it to the Tribunal, and it had not reached you, we dare say that you would be asserting your rights to know what the document was before it was considered by the Tribunal.

The situation is just reversed and now, if an error has occurred, of course it can and will be corrected, but the Tribunal will not, - until the document has been processed and is in the hands of the Prosecution, - the Tribunal will not give it consideration, so in the meantime we suggest that you ascertain whether or not the document has in due course reached the Prosecution. If there has been some breakdown in the Administrative procedure, that it has not, then see that that is corrected, or call our attention to it, and we will cooperate with you to see that it is corrected. When the document has reached the Prosecution, and has been in the hands of the Prosecution a sufficient time, then the Tribunal will give it consideration.

We cannot depart from that rule because it would be as unfair to you as it would be in this case to the Prosecution, to take up a matter about which they say they know nothing. We would not do that to you, and we shall not do it to the Prosecution.

Don't you think that is right, Counsel?

DR. ASCHENAUER: Your Honor, under these circumstances I shall give the prosecution the translation until 2:00 o'clock this afternoon, and I should like to ask you to permit me to make my procedural objection next Friday. I think this will be a fair settlement of the question.

THE PRESIDENT: Very well, we will make no commitment about next Friday for the reason that you are under the rules entitled to Thursday and Friday to make your opening statements, but as soon as the document has been processed, in the hands of the prosecution, and the prosecution has filed or defaulted on its answer, as soon thereafter as the Tribunal can reach it, we shall give you an opportunity to speak with respect to it and give it consideration without prejudice to your rights.

We will not set it for 2:00 o'clock on Friday because that would interfere with the opening statements, if the opening statements are then in progress, but we will give you an opportunity to be heard as soon as the matter can be reached without disturbing the regular procedure of the Tribunal.

Is there anything else to come before the Tribunal at this time? If not, the Tribunal is about to recess until 9:30 tomorrow morning, at which time, if Judge Morris is present, we shall proceed to hear the opening statements of the defense without prejudice to the rights that they may possess under the motion that was filed today to dismiss as to all or a part of the defendants as to all or a part of the charges in the indictment.

The Tribunal will now rise until 9:30 tomorrow morning.

(The hearing adjourned until 18 December 1947
at 0930 hours.)

CERTIFICATE OF COMMISSIONER

I, JAMES G. MULROY, AGO #5-397399, hereby certify that I am a duly appointed, qualified and acting Commissioner, to take the testimony of witnesses under Order of Tribunal No. 6, in the case of United States of America vs Krauch et al; that pursuant to said Order, upon the dates hereinafter listed, I have supervised the taking of testimony of witnesses examined before me, and said testimony has heretofore been properly recorded, reported and filed in the Office of the Secretary General and now constitutes a part of the official transcript of proceedings in the above case; and the dates of such examinations, names of witnesses and pages of the said official transcript are as follows:

<u>Date</u>	<u>Name of Witness</u>	<u>Official Transcript</u>
12 December, 1947	Paul H. Haeni	4577-4595
15 December, 1947	Karl Wolff	4596-4657
15 December, 1947	Gustav Schlotterer	" "
→ 17 December, 1947	Kurt Krugger	4692-4710
9 January, 1948	Adolf Hoehle	4946-5024
9 January, 1948	Willi Dagne	" "
9 January, 1948	Karl Amend	" "
17 January, 1948	Alfred Zaun	5470-5512
17 January, 1948	Perry Broad	" "
6 February, 1948	Josef Johan	6826-6881
7 February, 1948	Franz Rottenberg	6957-6979
26 February, 1948	Noack Treister	7696-7732
27-28 February, 1948	Rene Balandier	7925-7963
16 March, 1948	Fritz Goernert	9288-9305
16-17 March, 1948	Gerhard Ritter	9305-9358
17 March, 1948	Heinrich Van Beek	9359-9376
18 March, 1948	Dr. Charles Bendel	9584-9616b

I further certify that the aforesaid transcript pages comprise a full, true and correct report of said proceedings, testimony and evidence heard and recorded at proceedings before said Commissioner.

Dated at Nurnberg, Germany, March 31, 1948.

JAMES G. MULROY
Commissioner of Tribunal No. 6

James G. Mulroy

Official Transcript of Commission for American Military Tribunal VI in the matter of the United States of America against Karl Krauch, et al, defendants sitting at Nuremberg, Germany, on 17 December 1947, 1330, Commissioner Milroy presiding.

THE MARSHAL: The Honorable, the Commissioner of Military Commission VI.

The Commission for Military Tribunal VI is now in session. God save the United States of America and this honorable Commission.

There will be order in the Court.

MR. NEWMAN: The witness is Dr. Krueger, and we have to deal with his affidavit, Exhibit 1570, that is NI-10 728, our Document Book 64, page 42, and that is 68 of the German.

THE COMMISSIONER: Before you proceed, Mr. Newman, I would like to ask as to the defendants present — Will the Marshal please announce by name the defendants present?

THE MARSHAL: The defendants present are von Schnitzler, Mann and Kugler.

THE COMMISSIONER: Very well. I should like to know whether or not these are all the defendants who should be here who are interested in this matter. Is the Defense Counsel in a position to advise me on that?

DR. BERNDT: Dr. Berndt for the defendant Mann.

I am counsel for Wilhelm Mann. Dr. Siemers, who is Schnitzler's Defense Counsel wanted to come also. I do not know if the defendant Kugler's counsel will come, but I think he said just now that he did not want to appear here.

THE COMMISSIONER: Very well, Mr. Newman, you may proceed.

MR. SPRECHER: Mr. Commissioner, I just noticed some Defense Counsel are standing outside in the corridor. Perhaps they are interested in — It would just take a minute, I see?

THE COMMISSIONER: Let us defer this for just a moment and see what you find out.

DR. BERNDT: Dr. Siemers has not yet arrived. I think he will

*First Joint Motion of the Pros.
4692 and Defense to contest the Engh.
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449(1-176)*

be here a little later, but I do not think that is any obstacle for us to start with the examination.

THE COMMISSIONER: Very well, Dr., will you proceed then, Dr. Newmann, please, call your first witness.

Will you call the witness, please?

DR. KURT KRUEGER, a witness, takes the stand and testifies as follows:

Witness, you will please raise your right hand and say, "I."

WITNESS DR. KURT KRUEGER: I —

THE COMMISSIONER: State your name.

WITNESS DR. KURT KRUEGER: Kurt Krueger

THE COMMISSIONER: And repeat this oath after me. "I swear by God the Almighty and Omnipotent that I will speak the pure truth and will withhold and add nothing."

(The witness repeats the oath.)

THE COMMISSIONER: The witness may be seated.

Before we start examination, Witness, please understand that you are perfectly free to testify fully and freely in response to any questions that are asked you. However, it is the desire of the Tribunal of which I am acting as Commissioner that you make your answers brief and direct and avoid any unnecessary comment. In other words, what I mean to say to you, Witness, is that if you are asked a simple question answer it simply and do not attempt to elaborate on it until counsel asks you to go further.

The signal lights are connected with the sound system. It is necessary that there be a slight pause between questions and answers. When the yellow light is flashed it will indicate that you are going to rapidly and is a request that you slow down. The red light is a stop signal, and if it is flashed you will stop completely and not resume your answer until you are told that you may do so.

You may take the witness, Mr. Newman.

DIRECT EXAMINATION

QUESTIONS BY MR. NEWMAN:

Q. Dr. Krueger, will you please state your present residence?

A. I live in Bamholz, Kreis Schlushtern.

Q. Do you have a German copy of your affidavit before you?

A. Yes, sir.

Q. Have you talked over the contents of this affidavit with a member of the Prosecution during the last few days?

A. Yes.

Q. Is there anything you would like to correct concerning this affidavit or the supplement?

A. No.

MR. NEWMAN: I would like, Mr. Examiner, if you allow this opportunity to point to a misprint. This document refers in its third paragraph, this affidavit, to our Exhibit 1175. This is NI-2996, a so-called Situation Report on Russia, which is in our Document Book 63, page 37, and this is page 33 of the German book. Now, by a misprint which I happened to discover yesterday, the German stencil, the accompanying letter appearing in the German stencil is not signed as it should be by Dr. Krueger, this witness, but there is stated, "Signed, Kueppe," and I would like to make this clear for the record. I have no further questions.

THE COMMISSIONER: The record will show the corrections indicated by Dr. Newman.

MR. NEWMAN: I have no further questions.

THE COMMISSIONER: The Defense may take the witness.

DR. BERNDT: Dr. Berndt for the Defendant Mann.

CROSS EXAMINATION

QUESTIONS BY DR. BERNDT:

Q. Witness, may I ask you once more whether you signed this statement for the Exhibit 1570 and whether you have it in front of you?

A. Yes. (to both questions)

Q. In the first paragraph you mentioned the foundation of the

Eastern Company (Ostgesellschaft) or Monopoly Companies (Monopolgesellschaft). May I ask you whether this incorporation took place upon the instigation of a Government regulation or was it on the independent initiative of private industry, and, in particular, of I. G. Farben?

A. As far as I know, it was done on the basis of Government regulations or upon Government instigation.

Q. In the next sentence you speak of the fact that the German Government feared a run of various interest to German parts which would jump on these firms in order to claim them for themselves. Did Farben or any other members of the Vorstand, of the present defendants, have such an intention?

A. I didn't hear said anything like that about them, and I couldn't observe such a policy in any other way.

Q. Then you know nothing of that?

A. No, I don't.

Q. In the second paragraph you say that the general German economic policy towards Russia was at that time of such a nature that the industrial potential found in Russia should be taken into possession in order to utilize it extensively for the German war economy requirements. In the next sentence you mention the official German policy. Do you mean the official policy of the German Government?

A. Yes.

Q. Then you go on to say that Farben was not troubled by any thoughts as to whether or not this official German policy was justified and that they accepted this policy as a given fact. From this one might conclude that the Vorstand of Farben actually approved of this Government policy. Do you have definite indications which might justify such an assumption, namely, that Farben or any of the defendants here actually approved the official Government policy, or that they wanted to approve it?

A. No.

Q. The next sentence states that Herr Mann was the chairman of the Russia Committee established by Farben at that time. Because of this contextual connection of the two sentences, one might gain the wrong impression, and, therefore, I should like to ask you quite briefly something about the Russia Committee. Do you mean by this Russia Committee the former Commercial Eastern Committee?

A. Yes.

Q. Can you tell me when this Committee was formed for the first time?

A. No, I do not have that present in my memory.

Q. Not even approximately?

A. Unfortunately not.

Q. Is the Russia Committee the successor of the so-called Eastern Liaison Agency, Ost-Verbindungsstelle?

A. I believe so.

Q. Was this Eastern Liaison Agency, Ost-Verbindungsstelle, an internal commercial institution of Farben without any official character and without any direct or indirect connection with any Government agency?

A. Yes.

Q. Did this Eastern Liaison Agency, Ost-Verbindungsstelle, or its successor, the Commercial Eastern Committee, have the right to make resolutions, to take decisions about the business activity of Farben, in regard to Russia, or quite generally about the East?

A. I think that that did not have such a right.

Q. Was the purpose of this Committee and its actual activity directed towards informing themselves about the economic affairs in Russia, to report information about economic measures to be taken which the German Government wanted to introduce? Was it to observe the business processes of other economic enterprises, and finally to compile the material collected in this way to make it available to other gentlemen of Farben?

A. That describes and outlines the tasks of this Committee pretty exhaustively.

Q. Were the members of this Eastern Committee, first of all, directors of the sales combines of Farben, for instance, sales combines pharmaceuticals, dyestuffs, chemicals, and so on?

A. Yes.

Q. Was this Commercial Eastern Committee an institution which was interested in any way in taking away movables from Russia?

A. According to the character of the institution, I cannot imagine that they had such an interest. I could actually not observe that they were ever active in this sense.

Q. Did you observe by conversations or conferences with these gentlemen or because of your general knowledge of the business policy of Farben that the endeavor of the members of the Eastern Committee was generally directed towards selling German products and Farben products which were not available in Russia?

A. Yes.

Q. May I ask you whether you have the document, Exhibit 1533? That is the report of the Vorstand.

A. No.

DR. BERNDT: Mr. Commissioner, may I ask you in this connection if I may be permitted to submit to the witness the document, Exhibit 1533, which is NI-8265 in Document Book 80 on pages 134 and following, and I should explain that this is a record of the Thirty-sixth Vorstand Meeting

of Farben on 17 December 1942 which discusses the Eastern question under paragraph 8, and which remarks that the member of the Vorstand at that time, -- Mann -- made certain statements about this Eastern Committee, and it is connected with what the witness has just now stated to us.

THE COMMISSIONER: Well, now, may I ask, Doctor, what is your purpose in bringing this additional document in? It is my understanding that the examination was to be conducted strictly within the framework of the affidavit furnished by the witness. Now, of course, you have some latitude on cross examination, Doctor, as you know. Will you for the purpose of the record explain why you wish to bring this other document in?

DR. BERNDT: We have just now spoken about the fact that this Eastern Committee was a committee with whose aid certain products of Farben and other German products were sold or were to be sold in Russia. In this report of the Vorstand which is contained in this exhibit under number 9 it is mentioned expressly that the defendant made more detailed statements about this question. The record is signed by von Schnitzler and Dr. Krueger.

MR. SPEECHER: Mr. Commissioner, the Prosecution would have no objection to that. I have talked to Dr. Berndt about it.

THE COMMISSIONER: Then you may proceed, Dr. Berndt. You may proceed.

DR. BERNDT: May I then ask permission first to show this exhibit to the witness?

THE COMMISSIONER: You may.

DR. BERNDT: Thank you.

MR. SPEECHER: Mr. Examiner, if Counsel is going to have a private discussion with the witness, we would like to have it on the record.

THE COMMISSIONER: I think you are very much in order, Mr. Sprecher.

DR. BERNDT: I merely showed the letterhead of this document to the witness showing that it really is a minute of the meeting of the

Vorstand, and then I showed him paragraphs 8 and 9. This quite briefly --

THE WITNESS: May I interrupt? I asked you whether I am supposed to have signed it or not, and that is not possible. I didn't sign it. I never signed Vorstand records.

BY DR. BERNDT:

Q. No. Bruggemann signed it.

A. Yes.

Q. This paragraph shows that Mann made statements about the formation of the Eastern Committee, that he reported about the economic vitalization of the Eastern occupied territories in whose reconstruction our technicians should also participate, and that the Eastern Committee resolved to institute a representative organization for all sales combines, and that this representative organization was to be designated as Farben Bureau Ostland, G.m.b.H., I. G. Kontor Ostland, G.m.b.H. I should like to ask the witness quite briefly whether what is contained in this paragraph is correct, as far as he knows?

A. Absolutely.

Q. Thank you very much. I shall now come back to Exhibit 1517.

Mr. Witness, may I point out to you the last sentence of the second paragraph. You say that you could not remember whether he -- Mann -- played any particularly active part with regard to Russia. After I read this to you, can you remember that Mann was decisive in the foundation of this I. G. Kontor, G.m.b.H.?

A. Yes, I can. He was interested as the chief of the pharmaceutical sales combine, and he was also interested in taking over the chairmanship of this Committee at the time.

Q. Do you know that this enterprise with limited liability, this G.m.b.H., has the main function to sell and distribute products in the Baltic countries and in the East which were produced by Farben in the territory of the Reich, and that they were to be imported to the Eastern countries for the population at large?

A. Yes.

Q. Do you know anything about the fact whether this association evacuated any machinery or goods from the East?

A. I don't know that, and I consider it impossible.

Q. You consider it impossible. Did the defendant Mann have anything to do with the Chemie-Ost, G.m.b.H.?

A. I do not remember. I consider it improbable.

DR. BERNDT: May I ask you, Mr. Commissioner, if I may be permitted to submit a record to the witness also in Book 64 on page 19? That is the report of the Forty-fourth Meeting of the Commercial Committee of 4 November 1941. I was mistaken before. This document is the one that is signed by the witness.

MR. SPRECHER: There is no objection.

THE COMMISSIONER: You may proceed. What page of the document book is that?

MR. NEWMAN: Page 20.

THE COMMISSIONER: 20.

DR. BERNDT: Thank you. May I draw your attention, Mr. Commissioner to number 6 on this record. Under this paragraph the Chemie-Ost, G.m.b.H. is mentioned, and in this connection Mann's name is mentioned. May I be permitted to put this passage from paragraph 8 to the witness briefly?

THE COMMISSIONER: You may do so. Proceed, please.

DR. BERNDT: Thank you.

BY DR. BERNDT:

Q. Witness, in this record about the Commercial Committee meeting, you mentioned, first of all, the activity of the Chemie-Ost, G.m.b.H. Then in the next sentence you say Mann reported on the question. The next paragraph mentions the Liaison Office for the East. After you told me that the defendant Mann in your belief had nothing to do with the Chemie-Ost, G.m.b.H., I may ask you whether this record has not created a little misunderstanding by the fact that Mann's name is mentioned immediately following the Chemie-Ost, G.m.b.H., whether it might not perhaps be more correct to keep Mann's name separate from the Chemie-

Ost, G.M.B.H., and to mention him in connection with the Eastern Liaison Office.

Q. I am permitted to look at this a little more in detail? I have to observe that Lann's name is mentioned not immediately after Chemio-Ost, G.M.B.H., but immediately after questions concerning exportation to the East, after the sentence, "After this discussion takes place about Chemio-Ost, G.M.B.H., and questions concerning exportations to the East", and after the sentence it goes on to say, "Mann and Ter harr report on the tendencies which have been discernable up to now in the general development". One should add here "tendencies in the East". Quite generally speaking, from which it can be seen that the clear competence for the offices administering the East has not yet been created, I believe that I am not wrong in saying that when setting these facts down on the record, I merely wanted to say that the general development had been explained by Mann and Ter harr. I do not know whether that answers your question, which I don't remember really.

Q. I believe you have answered my question. I now come to the last point, and that is Exhibit 1175 in Book 63, page 37 of the English. This is Mr. De Haas' report, witness.

A. Yes.

Q. That report was submitted to you at the time, wasn't it?

A. Yes.

Q. Now I ask what was De Haas?

A. He was an employee of the Berlin D / 7 organization, and in my recollection he belonged to the Economic Policy Department of that organization.

Q. That is the DPO, isn't it?

A. Yes.

Q. Are you somewhat informed about the contents of this report?

A. Yes, I read it only yesterday.

Q. May I ask you whether this report according to its contents and the nature of its description is not a compilation of material that

was collected from Government decrees or other sources outside of Farben and which constituted intended measures that the Government wanted to initiate?

A. Yes.

Q. The document states that Haas' report was sent to the members of the Vorstand and to the Commercial Committee. When they sent this report, didn't they just merely want to inform the gentlemen of Farben about the situation?

A. That is the way I look at it.

Q. You said just now that you still remembered the report. May I ask you therefore whether there are any indications for the belief that the defendants of Farben approved everything and that especially the Consul General Haas approved everything that is indicated in the report as being measures of the Government?

A. No.

DR. LINDT: Thank you very much. I have no further questions?

THE COMMISSIONER: Is there redirect? Oh, you have some questions. Pardon me, Dr. Siemers.

DR. SIEMERS: Dr. Siemers for the defendant Dr. von Schnitzler.

CROSS EXAMINATION

BY DR. SIEMERS:

1. Dr. Krueger, in Exhibit 1175, the report of Dr. De Haas, the competent agencies are also mentioned at the beginning. Do you remember whether Ministerial Director Dr. Schlettenger worked in the Main Department Economy and that he directed the Industrial Economy Department, that he was competent for questions about the East?

A. Yes.

Q. In your affidavit, Dr. Krueger, you spoke about the ideas which were intended by the Government in the East. In this connection the Prosecution has submitted a document which was identified by Dr. Schlettenger as representing the ideas of the Government officials. I

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should like to submit this document to you and ask you whether you know of this document. This is Document NI-440, Exhibit 1171, Document Book 63 on page 6.

THE COMMISSIONER: You may proceed.

Q Dr. Krueger, you can see that, first of all, a very detailed distribution list is set down here and that that is followed by a rather lengthy document. You can look at it, of course, but I believe that a peremptory perusal will be sufficient. Then tell me when you are ready to answer my question.

THE COMMISSIONER: While we are waiting -- and lest I forget -- Dr. Siemers, may I ask if you filed an exhibit at the last hearing, last Friday? I have some scratch record that there was an exhibit identified and was offered in evidence, but I cannot remember whether it was your exhibit or not; and the Secretary General's office has been asking me about it. Was it actually put into evidence?

DR. SIEMERS: Yes, Mr. Commissioner; I submitted it in agreement with Mr. Sprecher. It was Hitler's decree of the 17th of June 1941, exhibit as Schnitzler Defense Exhibit No. 2.

THE COMMISSIONER: I remember it, but the question is did it actually get into the archives? You gave it to Mr. Sprecher, as I understand it.

DR. SIEMERS: Mr. Sprecher agreed that I, for reasons of clarity, might incorporate this document in my document book....

MR. SPRECHER: That is quite correct, Mr. Commissioner. However, I think the problem is that Dr. Siemers has not given a photostatic copy to the Secretary of the court, which should be done, quite apart from the document book. We will certainly have no objection to the copies which you want the Tribunal and the Commissioner and us to see to also be in your document book, Dr. Siemers, but the Secretary still has to have an original copy.

THE COMMISSIONER: Well, I said that the exhibit would be admitted, and that is the reason I am bringing it up now, because it hasn't apparently gotten into the archives. If you will furnish us with whatever is required in order to complete our records, it will be very much appreciated, Doctor.

DR. SIEMERS: Thank you, very much. Please forgive me. I shall have it submitted to the Secretary General.

BY DR. SIEMERS:

Q Dr. Krueger, can you answer my question now, whether this document ever reached you?

A I believe, with all certainty, that I never saw this document. Its form leads me to believe that it never came into my hands.

Q Do you believe that Dr. Schlotterer's opinion is correct, that this is a document which was destined for official agencies of the government?

A That may be correct, as can be seen from the distribution list.

Q Dr. Krueger, you spoke about certain trends of thought of the government without knowing this document. Did you have any direct documentary assistance for making such statements, or are your statements based on conversations that you had with third parties, with whom you discussed the Eastern question at the time?

A The latter is true. I do not remember that I had any special directives or documentary assistance for these statements, but I quite generally remember many conversations that I had about the subject with my colleagues and other friends from economic circles.

Q Also with officials — or aren't you sure about that?

A I was not very active at that time, and although I was a member of this committee I was concerned with these questions only on the fringe of the circle, so that I really cannot say that I spoke to officials or that I spoke to Dr. Schlotterer at that time. I cannot say that I had an opportunity to hear their opinions. I believe I never met Dr. Schlotterer after he had taken this office, I mean in this connection, although I met him afterwards.

Q You had only conversations of a general nature upon which you base your statements?

A Yes.

Q I have one last question with regard to the third paragraph of your affidavit. "In the official information of the time and in the attitude of the Germans at the time the concept was expressed that Russia was to be considered as booty." You speak about the Germans quite generally, but a little before that you speak of official publications. Whom do you mean by "Germans"? Do you mean the official government and party circles?

A You say that I speak of the Germans quite generally. I don't understand that. Perhaps I emphasized this sentence a little differently. My stress is a little different from your stress. I wanted to be understood in the following way. "The official reports and the attitude of the Germans or the conduct of the Germans." I believe you would be misinterpreting what I said if you want to supplement the "official reports" by "German." But I don't know if you understand what I mean.

Q If I understand you correctly, you want to say that the word "official", which is the adjective of "reports", does not belong only to the noun "reports" but also the the noun "conduct"?

A Yes; you can explain it grammatically. One doesn't say "official reports and official conduct." One says simply "official reports and conduct of the Germans." And then "official" refers also to "conduct."

Q Thank you very much. That clears up the misunderstanding.
I have no further questions.

THE COMMISSIONER: Is there any further cross-examination of this witness?

There being none, you may proceed with the re-direct.

MR. SPRECHER: I have only, at the most, two questions, and possibly only one, Mr. Commissioner.

RE-DIRECT EXAMINATION

BY MR. SPRECHER:

Q Dr. Krueger, you just read our Exhibit 1171; that is NI-440,

at the request of Dr. Siemers. At late as yesterday you read our Exhibit 1175, NI-2996, which is the De Haas Report. From your reading of these two documents, were you able to notice any conflicts between them with respect to what the German policy in Russia was?

A I understand your question --

DR. SIEMERS: Excuse me, Mr. Commissioner; I object to such a general question. The document is about twenty pages long. It is quite impossible, after such a brief glance through a document, to be able to say whether it coincides with another. One should give Dr. Krueger time enough to check it.

THE COMMISSIONER: I think possibly the Prosecutor will limit his question, probably, to some particular detail of the instrument he is speaking about.

MR. SPRECHER: Mr. Commissioner, I don't believe I can do that, but I didn't realize that the document was quite that long. Under the circumstances I think I will withdraw my question.....

THE COMMISSIONER: Very well.

MR. SPRECHER: Because I think it would take the witness some time to compare the two documents.

THE COMMISSIONER: I remember; it was a large document.

MR. SPRECHER: Yes.

THE COMMISSIONER: You may proceed.

MR. SPRECHER: No questions.

THE COMMISSIONER: No further re-direct?

Is there anything further to be considered with this witness?

Did you have something, Dr. Siemers?

DR. SIEMERS: No, thank you.

THE COMMISSIONER: Did you have something, Dr. Berndt? (Dr. Berndt shakes his head) Then the witness may be excused. (Witness excused.) Did you have something, Dr. Siemers?

DR. SIEMERS: Mr. Commissioner, I have only one request. Would it be possible that I be permitted to speak with the defendants who are present: Schnitzler, Mann and Kugler, for a few minutes now? I should not take more than ten minutes, at the most. I would be a big favor to me because I would not have to go down to the prison.

THE COMMISSIONER: If the Prosecution has no objection, of course I will not rule adversely to you. I will grant such permission.

MR. SPRECHER: Of course we have absolutely no objection. It is a question for the Marshal — and may we just talk to him a minute?

THE COMMISSIONER: If you please, Mr. Sprecher.

DR. SIEMERS: Mr. Commissioner, the Marshal is kind enough to make it possible, and Mr. Sprecher has agreed. If I have your permission then —

THE COMMISSIONER: Very well, you may confer with the defendants. And of course we would like you to make it as brief as possible.

DR. SIEMERS: Yes, thank you. I shall not have to trouble the Court with it; it has nothing to do with this meeting. I do not have to take your time, Mr. Commissioner.

THE COMMISSIONER: Very well, Dr. Siemers. Before any announcement as to recess is made, I should like to hear from Prosecution as to any further witnesses to be produced. I see Dr. Mueller is here also; perhaps he can assist us in making a schedule for the future examination of any witnesses who may be available.

You may proceed, Dr. Mueller.

DR. MUELLER: Mr. Commissioner, the Prosecution's memorandum of the 10th of December, 1947, has been submitted to the Defense counsel in Case No. 6 by me. In regard to stipulations or interrogatories, the Defense counsel will get in touch with the representatives of the Prosecution. The Defense suggests that the witnesses available for cross-examination, such as Marek, under No. 121, should be heard here and examined after the New Year. That is, after the opening statement has given us a chance to take care of these matters as should be done.

After the defense counsel decided on the other questions, I shall get in touch with you, Mr. Commissioner, and the representatives of the Prosecution.

THE COMMISSIONER: Well, the question I have just at present is whether or not I shall recess this hearing to a date certain, or whether or not I shall recess it indefinitely, subject to notice.

Now, what say you to that, Mr. Prosecutor?

MR. SPRECHER: Under the circumstances, I think that on that specific question it would only be reasonable to adjourn without a day certain,

but, Mr. Commissioner, I feel that a great deal of time is passing. There will be a very, very few of these persons beyond the jurisdiction of the Court who can come here, and the Prosecution does not want this proceeding to develop in a way so that later on, when difficulties are encountered by the Defense in getting answers to their interrogatories because of time, that in any event any blame is placed upon us. Therefore, I am anxious that as soon after the opening statements are over as possible, and there is a little more quietude in the ranks of the Defense counsel, the Defense be able to speak with some uniformity and authority concerning this matter and that they make their propositions to you or submit their interrogatories in the necessary cases through the Secretary General.

THE COMMISSIONER: Do you think there is any reasonable probability that we could have a hearing — let's see, immediately after the New Year, say, about the 6th of January? I think that comes on Tuesday.

MR. SPRECHER: Well, I would like to distinguish between a hearing which we hold to take testimony of the specific witness which I would like to have called after we are able to give your Honors some specific assurance that witnesses will be here at a certain date — and a meeting in order to discuss the general problems involved.

THE COMMISSIONER: Well, it seems to me now, from what you gentlemen have said, that the thing to do probably is to recess this meeting until further notice. So, for that reason, the Commissioner of Military Tribunal Number VI does now hereby recess the taking of testimony of witnesses in the case of the U.S. of America vs. Krauch, et al, subject to his notice upon all parties concerned of any further hearings later to be called.

(The Commission adjourned until further notice.)

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